ADVANCING JEWISH THOUGHT Mosaic

THE MOST SIGNIFICANT DOCUMENT COMPOSED BY JEWS SINCE ANTIQUITY

The beginning of a new series investigating how the Israeli Declaration of Independence came about, and what the text reveals about the country it brought into being.

April 14, 2021 | Martin Kramer

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"We hereby declare the establishment of a Jewish state in Eretz-Israel, to be known as the State of Israel."

אנו מכריזים בזאת על הקמת מדינה יהודית בארץ ישראל, היא מדינת ישראל.

David Ben-Gurion reading the Declaration of Independence on May 14, 1948 during the ceremony founding the state of Israel. *Zoltan Kluger/GPO via Getty Images*.

This sentence was proclaimed by David Ben-Gurion in Tel Aviv on Friday afternoon, May 14, 1948; in the Hebrew calendar, Iyar 5, 5708. As the most significant and consequential sentence uttered by a Jew since antiquity, it announced at once an end to 2,000 years of exile and dispersion and the restoration of the Jews' sovereign self-determination in their own land. "We hereby declare" is the modern equivalent of the biblical *hineyni*, "Here I am": an affirmation of presence and an assumption of responsibility. It is the key passage in Israel's Declaration of Independence.

Most Zionists today, and indeed most Israelis, even well-educated ones, have but a sketchy notion of what the declaration says—even though most can identify the document at glance. It can be seen hanging on the walls of government offices and school classrooms throughout Israel and in many Hebrew schools in America. Usually what is on display is a facsimile reproduction of

the parchment, with the text inscribed in a font normally reserved for sacred writing. A seal is attached, as are the reproduced signatures of the 37 signers. Older Americans may be reminded of the facsimile reproductions of the American Declaration of Independence seen in childhood.

Such an object, identifiable at a glance, can create a feeling of familiarity without communicating any clear notion of what the text actually says. Despite having lived in Israel for 40 years and been a professional historian for even longer, I had until recently only a patchy knowledge of the declaration and had never subjected its 979 Hebrew words to a deep reading or asked much about their genesis. My deeper interest dates to a few years ago when I undertook a project on the circumstances surrounding the decision to go ahead and declare independence: a decision made by the Zionist leadership in the interval between the UN partition plan, approved by the General Assembly on November 29, 1947, and the anticipated end of the British Mandate for Palestine on May 15, 1948.

Just what the decision's underlying circumstances were, and by what mechanism the decision was made, are subjects I shall come to soon. In the first phase of my study, my key focus was on the decision itself, and my findings appeared as the April 2018 essay at *Mosaic* under the title "The May 1948 Vote That Made the State of Israel."

In that essay, my major finding was that by May 1948 there really was no decision to be made: the yishuv (the Jewish community in Palestine) was primed for statehood, and the Zionist leadership moved resolutely toward declaring it as soon as Britain and the UN took their hands off of the country. The only real question was what *sort* of state to declare. As I showed in that 2018 essay, the key thing, for David Ben-Gurion, was not to commit the new state to any borders. This issue was debated in the People's Administration, the proto-government, on the very eve of independence, and Ben-Gurion won a crucial vote on the matter: the declaration would omit any mention of borders.

But this was just one issue, if a preeminent one. Over the course of my research I found myself asking whether anything else had been deliberately omitted from the declaration. Indeed, who drafted the document, on whose orders, and by what process? Who decided what went in and what went out? Here was the most significant and consequential document composed by Jews since antiquity, yet what did I know about how it came to be?

This is the gap I will attempt to fill here and in subsequent monthly installments. On detailed examination, this back-story is a gripping one, involving personalities, power struggles, and deliberations under fire. Behind the framed facsimile on the wall is a history of Jews who struggled to find the words that best expressed the spirit, the ideals, and the purpose of restored Jewish sovereignty after a hiatus of 2,000 years.

A poorly kept secret

It is important, at the outset, to read the declaration from start to finish, to experience it as it was meant to be experienced: as a single, integrated statement. But first let's go back and reconstruct the scene of its proclamation.

The physical setting, on Rothschild Boulevard, is the former home of Meir Dizengoff, Tel Aviv's first mayor. Built in 1909, it was renovated in the 1930s in the so-called "International Style." Today it is known as Independence Hall; in 1948, it was the Tel Aviv Museum, an art gallery.

The date is May 14, a Friday afternoon, and the time is 4:00 p.m., only a few hours before sundown and the onset of the Sabbath. For several days now, Zionist leaders and statesmen have been in a frenzy of activity. The British were supposed to assist a UN commission in implementing the 1947 partition plan, but they made no effort to do so and now their mandate will end on the Sabbath. They even unilaterally moved up the date, and General Sir Alan Cunningham, the last British high commissioner, has already boarded an outward-bound ship in Haifa harbor. The Union Jack is being lowered everywhere.

In the resulting void, the Jewish state, as recommended by the UN General Assembly, is about to be born. Who will recognize it? Will the world applaud? Most importantly, who will provide it with needed arms?

For months, the country has been in turmoil. Since the UN resolution in November, a civil war has raged between Jews and Arabs in Palestine. The Jews have held their own, and then some—but at great cost. They have secured a chunk but not all of the territory allotted to the Jewish state (in particular, not the Negev), and they also hold some of the territory allotted to the Arab state, including the seacoast town of Jaffa. But the 100,00 Jews of Jerusalem are under siege, and the road is too perilous to send relief convoys from Tel Aviv. Among the isolated Jerusalemites are eleven members of the People's Council, the proto-parliament, who should be at the museum in Tel Aviv for the afternoon ceremony.

In the meantime, the Jewish settlers in the Etzion Bloc, southwest of Jerusalem, have been overrun by the Arab Legion. Reports suggest that the defenders have been massacred by local Arabs. At the same moment, the armies of the neighboring Arab countries are gearing up to invade once the British decamp. There are already warnings that the Egyptian air force may bomb Tel Aviv. The Jews, at this point, have no air force of their own.

Under other circumstances, a declaration of national independence would be made at the national theater, Habimah, in the large square that it overlooks. But that would be tempting fate: nearly the entire Zionist leadership will attend the ceremony, thereby presenting a tempting target for an enemy. So the smallish museum has been chosen, invitations have been issued at the very last minute, everything is hush-hush, and the press has carried no notice of place or time. Yet, despite the supposed secrecy, Tel Aviv knows all of the details and the streets around the museum soon fill up.

The members of the People's Council who are in Tel Aviv and who will be signers of the declaration have met earlier in the afternoon, at the nearby building of the Jewish National Fund, for the purpose of debating and approving the declaration. Ben-Gurion is in the chair. He

has had only two hours of sleep, and has already spent the morning with his military chiefs. He presents the declaration, and a debate ensues. Cutting it short, he calls for a vote. On the first ballot, sixteen members vote for the declaration, eight abstain. Ben-Gurion then asks for a unanimous second ballot, and he gets it. The members now know what will be in the declaration, and all have agreed to sign it despite any reservations.

They arrive at the museum and settle into the hall. When Ben-Gurion's car pulls up, he emerges with his wife Paula to the salute of a policeman. His crisp return salute, captured on film, will become one of the iconic images of the day. The hall is now packed, standing room only.

Ben-Gurion rises, strikes a gavel, and announces that he will now read "the founding scroll" of the new state.

The text in parts and in whole

There are different ways to designate the constituent parts of the declaration, which has been divided into as many as seven or eight sections. The convention in Israel is to split it into four sections: historical preamble; proclamation; principles of the state; appeals to the world. At the conclusion of these four sections comes the affixing of signatures.

Section one, the historical preamble, is a series of chronological justifications linking the people to the land of Israel (*Eretz-Israel*) and explaining how Jewish history has led inexorably to this moment. At various junctures, that same history is invoked in making the case for Jewish rights to a state. This first section makes up fully half of the document:

> ERETZ-ISRAEL was the birthplace of the Jewish people. Here their spiritual, religious, and political identity was shaped. Here they first attained to statehood,

created cultural values of national and universal significance, and gave to the world the eternal Book of Books.

After being forcibly exiled from their land, the people kept faith with it throughout their dispersion and never ceased to pray and hope for their return to it and for the restoration in it of their political freedom.

Impelled by this historic and traditional attachment, Jews strove in every successive generation to re-establish themselves in their ancient homeland. In recent decades they returned in their masses. Pioneers, *ma'apilim* [immigrants coming to Eretz-Israel in defiance of restrictive legislation], and defenders, they made deserts bloom, revived the Hebrew language, built villages and towns, and created a thriving community controlling its own economy and culture, loving peace but knowing how to defend itself, bringing the blessings of progress to all of the country's inhabitants, and aspiring toward independent nationhood.

In the year 5657 (1897), at the summons of Theodor Herzl, the spiritual father of the Jewish state, the First Zionist Congress convened and proclaimed the right of the Jewish people to national rebirth in its own country.

This right was recognized in the Balfour Declaration of November 2, 1917, and reaffirmed in the Mandate of the League of Nations which, in particular, gave international sanction to the historic connection between the Jewish people and Eretz-Israel and to the right of the Jewish people to rebuild its national home.

The catastrophe which recently befell the Jewish people—the massacre of millions of Jews in Europe—was another clear demonstration of the urgency of solving the problem of its homelessness by re-establishing in Eretz-Israel the Jewish state, which would open the gates of the homeland wide to every Jew and confer upon the Jewish people the status of a fully privileged member of the comity of nations.

Survivors of the Nazi Holocaust in Europe, as well as Jews from other parts of the world, continued to migrate to Eretz-Israel, undaunted by difficulties, restrictions, and dangers, and never ceased to assert their right to a life of dignity, freedom, and honest toil in their national homeland.

In World War II, the Jewish community of this country contributed its full share to the struggle of the freedom- and peace-loving nations against the forces of Nazi evil and, by the blood of its soldiers and its war effort, gained the right to be reckoned among the peoples who founded the United Nations.

On November 29, 1947, the United Nations General Assembly passed a resolution calling for the establishment of a Jewish state in Eretz-Israel; the General Assembly required the inhabitants of Eretz-Israel to take such steps on their part as were necessary for the implementation of that resolution. This recognition by the United Nations of the right of the Jewish people to establish their state is irrevocable.

> This right is the natural right of the Jewish people to be masters of their own fate, like all other nations, in their own sovereign state.

The second section comprises the proclamation of the state and its institutions. It is an act based on the assertions in the preamble:

> ACCORDINGLY WE, MEMBERS OF THE PEOPLE'S COUNCIL, REPRESENTATIVES OF THE JEWISH COMMUNITY OF ERETZ-ISRAEL AND OF THE ZIONIST MOVEMENT, ARE HERE ASSEMBLED ON THE DAY OF THE TERMINATION OF THE BRITISH MANDATE OVER ERETZ-ISRAEL AND, BY VIRTUE OF OUR NATURAL AND HISTORIC RIGHT AND ON THE STRENGTH OF THE RESOLUTION OF THE UNITED NATIONS GENERAL ASSEMBLY, HEREBY DECLARE THE ESTABLISHMENT OF A JEWISH STATE IN ERETZ-ISRAEL, TO BE KNOWN AS THE STATE OF ISRAEL.
>
> WE DECLARE that, with effect from the moment of the termination of the Mandate, being tonight, the eve of Sabbath, Iyar 6, 5708 (May 15, 1948), until the establishment of the elected, regular authorities of the state in accordance with the constitution which shall be adopted by the Elected Constituent Assembly not later than October 1, 1948, the People's Council shall act as a Provisional Council of State, and its executive organ, the People's Administration, shall be the Provisional Government of the Jewish state, to be called "Israel."

Next, the third section lays out the guiding principles of the just-proclaimed state of Israel:

> THE STATE OF ISRAEL will be open for Jewish immigration and for the ingathering of the exiles; it will foster the development of the country for the benefit of all of its inhabitants; it will be based on freedom, justice, and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all of its inhabitants irrespective of religion, race, or sex; it will guarantee freedom of religion, conscience, language, education, and culture; it will safeguard the holy places of all religions; and it will be faithful to the principles of the charter of the United Nations.
>
> THE STATE OF ISRAEL is prepared to cooperate with the agencies and representatives of the United Nations in implementing the resolution of the General Assembly of November 29, 1947, and will take steps to bring about the economic union of the whole of Eretz-Israel.

Section four then appeals to various audiences: the international community, the Arabs in and outside of Palestine, and world Jewry.

> WE APPEAL to the United Nations to assist the Jewish people in the building-up of its state and to receive the state of Israel into the comity of nations.
>
> WE APPEAL—in the very midst of the onslaught launched against us now for months—to the Arab inhabitants of the state of Israel to preserve peace and participate in the

> upbuilding of the state on the basis of full and equal citizenship and due representation in all of its provisional and permanent institutions.
>
> WE EXTEND our hand to all neighboring states and their peoples in an offer of peace and good neighborliness, and appeal to them to establish bonds of cooperation and mutual help with the sovereign Jewish people settled in its own land. The state of Israel is prepared to do its share in a common effort for the advancement of the entire Middle East.
>
> WE APPEAL to the Jewish people throughout the Diaspora to rally around the Jews of Eretz-Israel in the tasks of immigration and upbuilding and to stand by them in the great struggle for the realization of the age-old dream: the redemption of Israel.

Finally comes the affixing of signatures:

> PLACING OUR TRUST IN THE ROCK OF ISRAEL, WE AFFIX OUR SIGNATURES TO THIS PROCLAMATION AT THIS SESSION OF THE PROVISIONAL COUNCIL OF STATE, ON THE SOIL OF THE HOMELAND, IN THE CITY OF TEL-AVIV, ON THIS SABBATH EVE, THE 5TH DAY OF IYAR, 5708 (MAY 14,1948).

When Ben-Gurion finished reading the declaration, Rabbi Fishman-Maimon, a member of the People's Council, recited the *Sheheḥeyanu,* the blessing of thanksgiving. Many would remember it as the most moving aspect of the proceedings. The members of the People's Council then came up, one by one, to sign the parchment in alphabetical order. Moshe Shertok, the foreign-minister-in-waiting, held it as each signed his name. Blank space was left for the members who could not be present.

Some in the audience now expected a speech. But then the strains of *Hatikvah* descended from the building's second floor where the Philharmonic Orchestra had been crammed. After the anthem, Ben-Gurion banged his gavel and made this announcement: "The state of Israel has arisen. This session is adjourned."

The ceremony had lasted a little more than a half-hour. The parchment was taken off for safekeeping in the vault of the Anglo-Palestine Bank. The next morning, Tel Aviv had a taste of what was to come when Egyptian Spitfire aircraft bombed the city.

A controversial and contingent text

The declaration was written in haste, under the dual pressures of a deadline and a war. From the very outset, it was a controversial document. Even some of its signers thought it flawed, perhaps even deeply flawed. The structure, the content, and the style met with criticism from different and sometimes opposing corners. Had the authors had another few hours or days or weeks, they might have produced a different statement. What is remarkable is that in such difficult

conditions they *did* produce a lasting declaration, one that still resonates more than 70 years later.

I will address the criticisms in depth as we proceed. But by way of a preface, let me emphasize that the year 1948, the year of Israel's birth, was a cascade of dramatic and decisive events. It was above all a year of war, both between Jews and Arabs in Palestine and then between Israel and neighboring Arabs states. The famous books about that year are military histories: Dan Kurzman's *Genesis 1948,* Dominique Lapierre and Larry Collins's *O Jerusalem!,* and Benny Morris's *1948*. It was also a year of human masses on the move: an inward stream of Jewish refugees from Europe, and the flight outward of Palestinian Arab refugees.

In most accounts of 1948, the drama of the war overshadows everything else, including the declaration of independence—a brief interlude in the unfolding epic of sacrifice, courage, and suffering. In the history books the declaration thus receives only a few pages at most, and these mainly focus not on the text but on the drama surrounding the event.

The military history, at least in its broad outlines (some covered by me in past *Mosaic* essays), is relatively familiar. In what follows, therefore, the war will recede into the background as the declaration assumes the foreground, with its text assuming priority over the drama of its proclamation. True, there are many fascinating back stories about that day, May 14, 1948, and I will tell a few of them. But in the end, what is left is the declaration itself; what lives is the text.

Over the past two decades, the complicated history of the drafting of the declaration has been sorted out brilliantly by Yoram Shachar, a leading legal scholar. Relying on him, I will outline the key stages in the drafting, each of which saw major changes in the text. It is also important to know who, up to and including David Ben-Gurion, made which changes. But for our purposes, instead of going from draft to draft, it will be most useful to proceed thematically.

For instance: the next essay in this monthly series will draw out the overall characteristics of the declaration. Unlike America's Declaration of Independence, the Israeli document doesn't breathe fire—against anyone. Indeed, one might question whether it even qualifies as a declaration of independence; for if so, independence from *whom*? To answer that question, we must reconstruct the peculiar political circumstances that gave the declaration its peculiar character, and to do that we'll proceed in installments to examine the declaration for what it reveals about five themes.

For each of the five themes—each the subject of one essay—we'll analyze what the declaration says and doesn't say; whether or not an issue of principle or politics arose in the drafting stage; and how the text has been interpreted at various points over the past 70-plus years. Here follow the five themes, in order.

1. **Identity.** Who declared the state? By what authority, in whose name? The entity being declared was "a Jewish state in Eretz-Israel," but what did "Jewish state" mean to those who wrote the declaration? What does its name, Israel, reveal about the identity of the new state? If there were other alternatives—and there were—why was this name ultimately preferred?

2. **Religion.** If readers are familiar with any aspect of the declaration's composition, it is the dispute over whether or not to mention God. The debate spilled out into the public arena at the time, and was famously resolved by mention of *Tsur Yisrael,* "the Rock of Israel," in the concluding passage quoted above: "Placing our trust in *Tsur Yisrael,* we affix our signatures to this proclamation."

   We know the story of the basic tension in this passage: Ben-Gurion wanted a formula that could be signed by both an Orthodox Jew and an atheistic or Communist Jew. *Tsur Yisrael* was an ambiguous compromise. We'll reexamine this episode, but other passages in the declaration also required that choices be made about the role of divine promise in the rights of the Jewish people to the land. In general, the earliest drafts made the most references to God; with each successive draft, the number shrank, eventually reaching none. And yet *Tsur Yisrael* made the cut. So is it right or wrong to regard the declaration of independence as a secular document?

3. **Legitimacy.** How did Israel's founders express in words the legitimate claim of the Jews to statehood? What was the mix of historical, religious, and legal claims put forward in the text? Which ones were directed internally, to the Jewish community, and which externally, to the world at large? And why were some kinds of claims preferred over others?

   In particular, how much significance should be attached to the issue of *international* legitimacy? The declaration refers six times to the United Nations, mostly in connection with UN General Assembly resolution 181, recommending the partition of Palestine into Jewish and Arab states. Earlier drafts not only cited the UN resolution but affirmed that the state would be established in the borders specified on the map of the November 1947 partition plan.

   In the end, as we have seen, all mention of the borders was dropped after a very close vote in the People's Administration. What does the absence of any territorial references suggest? Did the declaration commit Israel to *any* territorial limits or configuration?

   Nor is that all. In the final draft, a reference to the 1947 UN plan as a *partition* plan was also cut at Ben-Gurion's insistence. Did the declaration reject an Arab state in Eretz-Israel?

4. **Rights**. It is often assumed that the declaration proclaimed Israel to be a Jewish and democratic state. In fact, the word "democratic" doesn't appear in the text. The omission wasn't just a matter of carelessness. The word appeared in earlier drafts but was then deleted. Why? Are there nevertheless passages that could be read as effectively insisting on the state's democratic character—so much so as to license subsequent legislation asserting that the declaration *constitutes* Israel as not only Jewish but also democratic?

And what of individual rights? Israel's declaration, like America's, justifies the establishment of the state in terms of its pledge to uphold the rights of its prospective citizens. But which rights? "We hold these Truths to be self-evident," states the American Declaration of Independence, "that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness." Israel's declaration also makes numerous references to rights, and these references, too, underwent an evolution in prior drafts.

Yet all but one such reference is to the *collective* rights of the Jewish people. What does that say about how the founders understood rights in the first half of the 20th century? When, in the second half, Israel's Supreme Court expanded *individual* rights, claiming a basis in the declaration's principles, was it being true to it? Similarly, what were the aspirations and apprehensions behind the declaration's discussion of collective Arab rights?

5. **Law.** If I were writing a series of essays on the American Declaration of Independence, this one would be unnecessary. The American declaration served an immediate political purpose: independence. The Bill of Rights and then the Constitution served as the foundation of American law.

   Indeed, something similar was supposed to have happened in Israel. The declaration of independence promised a convening within six months of a "constituent assembly" charged with drawing up a constitution. But because of the war and then postwar politics, this never happened.

   In the absence of a constitution, a declaration that was never meant to serve as the basis of law became a kind of quasi-constitution, retroactively vested with legal standing. Far from being only a historical document, it became and remains a presence in contemporary debates, especially over rights. Has the declaration stood up to this test? Is it really the ultimate bulwark of the Jewish and democratic state?

To this day, these five topics are among the most vexing and controversial issues surrounding Israel. Religion, borders, democracy, rule of law, rights—not to mention Zionism itself: about each, the declaration raises a host of questions not all of which it answers unequivocally. The reason had partly to do with the need to find internal consensus, and partly with the need to satisfy international opinion. Jurists today read and reread the document in the search for answers, and to discover intent.

But another way to read it is as a *contingent* document—that is, for what it tells us about a moment in the history of Israel: a defining moment, at a point where every decision and every word had fateful consequences.

Improvised Israel

The declaration isn't preserved in memory only as an image of the parchment. Equally famous is the sound of Ben-Gurion's voice reading the declaration, as well as a brief film clip of him reading parts of it. But there is no film of him reading the whole thing.

Why? After all, 1948 was already well into the age of mass media. True, the radio still ruled. When Winston Churchill and Franklin D. Roosevelt wanted to reach their audiences quickly, they did so via the radio. For some famous speeches, we have only audio, a prime example being Churchill's "darkest hour" speech after Dunkirk in 1940.

But this was also the era of newsreels in movie theaters. From 1933, for example, we have full filmed versions of Adolf Hitler's first speech as chancellor and FDR's first inaugural address. And we also have many films of famous speeches during the war years, including FDR's so-called "infamy speech" in Congress right after Pearl Harbor in 1941. So why not a full film of Ben-Gurion declaring Israel's independence?

The answer says much about the improvised nature of the whole episode. An audio version wasn't going to be a problem. A recording was made in the museum, and listeners made their own recordings from the live radio broadcast. But the only moving-picture camera at the May 14 ceremony belonged to a cinematographer, Nathan Axelrod by name, who owned a company that produced weekly newsreels. At the last minute, the Jewish Agency commissioned him to film the great occasion, but he had only four minutes of film in stock to cover a ceremony that was expected to last a half-hour.

Ben-Gurion then arranged to signal Axelrod at the most important points in the proceedings to indicate when the camera should roll. After the ceremony, the Jewish Agency press handlers cut up the film into four parts, and sent them out to various news agencies for use in newsreels. As a result, less than a minute of the original survived in Israel. At a later time, the sound recording was overlaid with this fragment, but watching it closely reveals that there is no synchronization between the movement of Ben-Gurion's lips and his words.

So we are left with Ben-Gurion's voice and some excellent still photographs, including by Robert Capa, one of the world's most famous photographers. But the absence of a good filmed version creates a certain distance between us and the declaration, as if it were something from another era, not ours.

That is not entirely bad, however. It *was* a different era, in the history of the world and in the history of the Jews: an era of desperation, uncertainty, and hope in the brief interval between the horrors of the Holocaust and the resurrection of Israel. If the new state couldn't cobble together a 30-minute film of its most historic moment, think of how difficult it must have been to fight a battle for survival with scraps of outdated technology left over from a previous war.

The fragmentary state of the film is a reminder: we must understand the founders in their own time. The certitude and security we enjoy today were utterly alien to them. The declaration is a testament not only to the supreme wisdom of its authors but also—despite everything—their sheer, unadorned courage.

ADVANCING JEWISH THOUGHT Mosaic

THREE WEEKS IN MAY: HOW THE ISRAELI DECLARATION OF INDEPENDENCE CAME TOGETHER

The declaration came together so hurriedly that if the drafters had argued for even a few hours more it would have read much differently.

May 19, 2021 | Martin Kramer

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This is the second installment in the historian Martin Kramer's series on how Israel's declaration of independence came about, and what the text reveals about the country it brought into being. The previous essay can be seen here.—The Editors

Jewish fighters at their radio in an undisclosed hideout on April 10, 1948, in the weeks before the founding of the state of Israel. *Zoltan Kluger/GPO via Getty Images*.

Israel's declaration of independence wasn't something the founders had time to debate at leisure. It was compiled over a fairly brief period of time. The active interval was about three weeks long, from the third week of April 1948 right up to the hard deadline of May 14, the day prior to the date scheduled by the British for the end of the mandate and their departure from the land.

We owe a lasting debt to the Israeli legal scholar Yoram Shachar, who did the painstaking reconstruction of the declaration's drafting process. Having tracked down the early versions, held in private hands, he pieced together the puzzle in an 80-page article in the *Tel Aviv University Law Review* (2002). His yeoman work was published before the papers themselves became a hot item when, in 2015, the heirs of the lawyer who composed the first drafts tried to sell them at auction at a starting price of $250,000. The state of Israel blocked the sale. In 2019, with arbitration having failed to resolve the issue, the Supreme Court ruled that the drafts were "part of the cultural property of the state of Israel, testament to our past, and part of our collective identity," and were thus to be handed over to the state archives.

Three weeks

The drafting process itself was hugely complicated; what follows is a simplified outline that greatly compresses the process but will suffice for our larger purposes in this series of essays.

After various abortive starts and suggestions, the process really began on April 24, when Felix Rosenblueth (soon to be Pinḥas Rosen, the future first justice minister of Israel) asked Mordechai Beham, a thirty-three-year-old Tel Aviv lawyer, to try his hand at a draft. Beham went home and in turn asked help from a friend, Harry Solomon Davidovitch, a Lithuanian Jew who in the interim had served as a Conservative rabbi in America.

Davidovich had the text of the American Declaration of Independence. Copying parts of it by hand, Beham then translated it into Hebrew, making suitable emendations along the way, and submitted his draft to Rosenblueth. Dissatisfied with what he read, Rosenblueth gave it to his friend, the future Supreme Court justice Zvi Berenson, who would later claim to have written the declaration himself over a period of 48 hours without the aid of a preliminary text. The draft—clearly drawing upon Beham—then came back to Rosenblueth, who still wasn't satisfied. So Beham and another jurist, Uri Yadin, took another stab at it.

At this point, May 12, the draft went to a five-man committee effectively headed by Moshe Shertok (later Sharett, Israel's first foreign minister). Shertok worked through the night, at first from scratch but eventually making use of some of the previous draft. The next day, May 13, he presented his version to the committee, where it encountered disagreements. So David Ben-Gurion took the text home, closeted himself in his office, and in perhaps ten minutes reduced the declaration by a quarter and added crucial elements.

The next day, May 14, Ben-Gurion presented the draft as a fait accompli to the People's Council, the *yishuv*'s proto-parliament, where a truncated debate took place. Promised by Ben-Gurion that they could make amendments later, the members adopted his version and rushed off to the Tel Aviv Museum where Ben-Gurion read the text before the nation and the world. Not a word has been changed since then.

Over the course of the three-week process, things had gone into and come out of the text in consonance with the preferences of individual drafters. Beham, the young lawyer working under the influence of a rabbi, entered the most religious elements. Berenson, a man of very liberal tendencies, made greater room for individual rights. Shertok and Ben-Gurion were concerned with establishing legitimacy.

Although the mix changed over time, all of these elements feature in the document as read on May 14. If the drafters had argued for another week, or a few days, or even a few hours, it would have read differently, just as it might have done had Ben-Gurion himself been as free to dwell on it as Thomas Jefferson was when working on the American Declaration of Independence.

But he wasn't. While the declaration is identified with Ben-Gurion more than with anyone else, he didn't spend much time on it. He believed there should be a declaration of statehood, but he let others do the drafting and didn't devote much of any waking day to its content. In taking his final cut at it on the night before the declaration, he gave it his unique imprimatur but did so on the fly.

Ben-Gurion's prime concern, though not his exclusive one, seems to have been to assure that the declaration said nothing that would limit Israel's war plans. Thus, his diary entry for May 13, 1948, the day he edited the text, is almost entirely devoted to war matters. At that time (as we saw in last month's essay), the Etzion Bloc, a cluster of Jewish settlements outside Jerusalem, was under siege by the Jordanian Arab Legion. In his diary, Ben-Gurion is clearly preoccupied with this emergency: lives are at stake, and so is the fate of Jerusalem itself. Only at the end of the entry does he laconically write: "At six o'clock, a People's Council meeting to discuss the phrasing of the declaration which Moshe [Shertok] prepared. In the evening, I prepared the final edit of the draft"—namely, the draft he would offer to the People's Council for its approval in the early afternoon of the next day.

When, at that meeting, objections were raised by attendees who were seeing the draft for the first time, and Ben-Gurion responded that they could express their reservations later but that for now they should accept it, this is how he explained it to them:

> We are living in an abnormal time. First, the mandate ends today. Second, a state of emergency. Third, over the last few days we couldn't bring in a significant number of [People's Council] members stuck in Jerusalem, despite their legitimate request. . . . The purpose of the declaration isn't to delve into political clarifications (and we have lots of political scores [to settle]). Its purpose: anchoring the declaration of independence. This is its main function. I agree . . . that the text isn't the height of perfection. And there is no one among its drafters who thinks it's the height of perfection. But the purpose was to give just those things that, in our opinion, provide a basis for what we'll do today, for the people of Israel, world opinion, and the UN. We're declaring independence, nothing more. This isn't a constitution. As for the constitution, we will have a session on Sunday, when we will deal with it.

Having been asked to put their reservations aside, the members agreed to do so as a matter of urgent expediency. Had they had time for a general debate, certain passages might have read differently.

A friend of mine once told me he had read the declaration together with his granddaughter, dwelling on every phrase as though they were reading a portion of the Torah. Not only is there a natural inclination to do so, but there is a visual cue: the official copy of the declaration was written on parchment like a Torah scroll and in the same calligraphic font, Ktav Stam, used in preparing such a scroll. Indeed, the artifact in Hebrew is called a *megillah*, a "scroll," a word also used to describe certain sacred writings.

Does it deserve the appellation? In the interest of adding perspective, it may be helpful to adduce a few rather mundane facts. For one thing, Ben-Gurion didn't read the declaration from this

scroll but from three mimeographed pages; precisely because the text had been in flux until the last minute, the calligrapher had no time to produce a final document for the ceremony. There, signatories affixed their signatures to a piece of blank parchment, temporarily attached to the mimeograph. That parchment was later stitched to two larger sections of, in the apt description of the Israel State Archives, "parchment-like paper" containing the calligraphic text, and then the "three parts were treated and made to look identical." (In fact, while the parts do look identical, the stitches are clearly visible.) The complete object wasn't ready until June.

The proper way to read the declaration, then, is to focus not only on the text but also on the stitches. These remind us of the degree to which this is a *contingent* text, evolving against a deadline in the midst of other dramatic developments and stitched together as phrases appeared and disappeared. Later, the text would be canonized, and its every nuance parsed as to the intent of the "founders." Although no one can deny such intent, it is important to remember that any phrase may read "exactly" as it does because the drafters just ran out of time to debate it.

Here is one example, related to style rather than substance. One of the changes made by Ben-Gurion was in the way paragraphs opened. In the penultimate draft by Moshe Shertok, each paragraph began with "Whereas" (*ho'il v'-*): "Whereas the Jewish people," "And whereas in every generation," "And whereas the Mandate," and so forth. There were nine of these, culminating with "Therefore" (*l'fi-khakh*) we declare the state.

The evening before the declaration, Ben-Gurion crossed out all of the "whereases." Shertok never resigned himself to this alteration, as he explained in an interview thirteen years later:

> I believe that [Ben-Gurion] weakened the logical sequence of the document. . . . I was of the opinion that by beginning the declaration with the word "whereas" and repeating it at the head of each paragraph, a sense of close continuity would be introduced which would keep the reader in growing suspense till the final hammer blow: "Therefore!"
>
> Ben-Gurion did not believe that this kind of formulation was suitable for such a document, particularly in Hebrew, so he began his draft by simply citing a series of facts, one after the other. His conclusion, which also began with the word "Therefore," had, to my mind, no apparent connection with what had preceded it. I thought that this constituted a serious defect in the declaration, but there was no time to thrash out the matter properly, so that is how it went.

Independence or statehood?

Another characteristic of the declaration, certainly as compared with the rousing language of the American Declaration of Independence, is its subdued tone. The difference is perhaps analogous to that between *The Star-Spangled Banner* and *Hatikvah*. The American national anthem is a call to rally around an embattled flag. The Israeli national anthem is about long-term perseverance, a

hope that never flags. Whenever, at contemporary events, both anthems are played with a quick transition between them, the difference is palpable. Both are moving, but in very different ways, and this difference in tone can be traced to a very fundamental divergence between the two declarations themselves.

In particular, although the Israeli document is called a declaration of independence, its actual formal name is otherwise: the Proclamation of the State of Israel. Not independence, but statehood: the two may seem identical, but they are not.

Not every state has a declaration of independence. Britain, France, Germany, Italy, and Spain, for example, do not. Most states that do have declarations of independence had belonged to empires from which they separated or seceded, often in struggles of liberation. They thus declared independence *from* another polity; their declarations often include a long litany of complaints against the misrule of their former overlords, followed by a call to arms. Fully 70 percent of the American Declaration of Independence consists of a bill of particulars concerning King George III's "repeated injuries and usurpations" and his trampling on the liberties of the colonists.

The *yishuv* likewise waged a struggle against the repeated injuries and usurpations of Britain under, in their case, King George VI. It was this Britain that shut the doors of the Jewish "national home" to the Jews of Europe at the hour of their greatest need—a greater injustice than any inflicted on the American colonies. Indeed, Britain's decision to give up the Palestine mandate may have been partly the result of the blood-stained campaign waged against it by the Jewish underground in Palestine. Yet the Israeli declaration doesn't include a single grievance against the departing imperial overlord.

Why not? There are two reasons.

First, a bill of particulars had already been delivered, and quite recently. This was the "Declaration of Political Independence" made by the Zionist Executive Council, the highest body of the Zionist Organization, on April 12—that is, a month before the end of the mandate. In a dramatic midnight session, the Council had declared "its decision to establish in the country the high authority of our political independence. . . . Immediately upon the end of the mandate, and no later than May 16, there will come into being a Jewish provisional government." It was precisely to implement this decision that the Zionist Executive, in the same declaration, created the People's Administration headed by Ben-Gurion.

The "Declaration of Political Independence" was written by Zalman Rubashov (later Shazar, the future third president of Israel), a man justly renowned for his rhetorical powers. Scholars don't include it in the drafting history of the May 14 declaration because it can't be shown that it was used as a source-text by the drafters. In my view, this underestimates its role as an inspiration. But, whatever its influence, the earlier declaration certainly exempted the later declaration from the need to settle open accounts with Britain. "Behold," it cried,

> the days of the British mandate have ended. On May 15, the UN will take back from the British government the trust given to it by the League of Nations 28 years ago, and which it did not uphold. The denial by the British mandate of its purpose grew and

> grew, and became in the last ten years the basis of Britain's policy in the East. Instead of assisting the immigration of Jews to their national home, the gates were closed before the persecuted of our people in the most tragic hour of their dispersion. Britain imposed a blockade on those who reached these shores, and recruited forces from afar to condemn them to lives of danger and loss. They [the British] forfeited the barren lands of our country to the eternal desert and our dogged rivals; they chose as an ally the allies of the greatest tormentors of our people and the enemy of all humanity. The hand that locked the gates of the land in the face of our tortured brethren, for whose salvation the national home was mandated by the entire League of Nations, opened those same gates to the [Arab] vandals and invaders who entered through the crossings to prevent the implementation of the decision of the nations, and to plot to finish that which Satan [that is, Hitler] did not complete.
>
> And now before Britain's departure, the mandatory government strikes at the foundations of our creative work, and forfeits to chaos that which we built up with painstaking perseverance over generations. The land of our redemptive hope is about to become, God forbid, a trap for the remnant of Israel. Therefore, the world Zionist movement, in agreement with the entire house of Israel, is resolved, upon the end of the failed mandatory government, to banish foreign rule from the land of Israel, so that the people will rise up and establish its independence in its homeland.

Now, *that* sounds like a declaration of independence in the best American tradition. The British closed the gates of Palestine to the Jews? The British also closed the gates to the American colonies in order "to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; [and] refusing to pass others to encourage their migrations hither." The British in Palestine allied themselves with our tormentors, opening the crossings to invaders? The British did the same to the American colonists by "endeavoring to bring on the inhabitants of our frontiers, the merciless Indian Savages whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions." And so on.

Thus, if none of this spirit made its way into the Israeli declaration, one reason is that Rubashov's declaration already delivered the bill of indictment. But there is a second and more profound reason: the British didn't have to be defeated and thrown out. That struggle had ended, and they were leaving. Nor was the Israeli declaration compelled to rally anyone against Perfidious Albion. The Jewish state, in the Israeli declaration, would arise as of May 15, 1948 in a void resulting from "the termination of the British mandate." There would be no governing authority from which to declare independence.

The declaration doesn't even declare the state *now*. In its words, the state just "comes into effect from the moment of the termination of the Mandate, being tonight"—not in opposition to or rebellion against anyone but as the successor to a vacated authority.

True, there had been one last stab at including a condemnation of the British. At the People's Council meeting on the day of the declaration, Meir Vilner, of the Communist party, proposed an article denouncing the oppression of both Jews and Arabs by British colonialism. Shertok replied: "If we go into historical assessments and definitions, I'm afraid it will spoil the

celebratory spirit of the declaration, and also its political logic at this time." When another participant argued that Britain's conduct since 1939 should at least be condemned by omitting any mention of the promises of the 1917 Balfour Declaration, Ben-Gurion ruled otherwise. "I disagree with the proposal to erase the Balfour Declaration. It's ridiculous, and it would be understood as vindictive small-mindedness, and bad form."

The new Jewish state also had something going for it that the American colonies lacked. States declaring independence from another polity usually have to build their legitimacy from scratch. Israel's declaration assumes that the legitimacy of the state is a settled matter thanks to the UN General Assembly resolution of November 1947. It is the UN, says the Israeli declaration, that "passed a resolution calling for the establishment of a Jewish state in Eretz-Israel; the General Assembly required the inhabitants of Eretz-Israel to take such steps as were necessary on their part for the implementation of that resolution." The *yishuv*, in establishing a state, was simply fulfilling a requirement of the international community.

In all of these respects, the circumstances of Israel's birth were an anomaly, as was duly noted by Arthur Koestler in his 1949 book *Promise and Fulfillment*:

> Virtually all sovereign states have come into being through some form of violent and, at the time, lawless upheaval which after a while became accepted as a fait accompli. Nowhere in history, whether in the time of the [post-Roman Empire] migrations, the Norman Conquest, the Dutch War of Independence, or the forcible colonization of America do we find an example of a state being peacefully born by international agreement. In this respect, Israel is a freak. It is a kind of Frankenstein creation, conceived on paper, blueprinted in the mandate, hatched out in the diplomatic laboratory.

Later, Koestler writes, at the implementation stage, Israel would secure its independence in a violent cataclysm, like all other states. But, like no other state in history, it received its license to exist by a two-thirds majority vote of the world's other independent states. In declaring independence, moreover, Israel could claim to be on the side of international agreement, while the Arabs were in rebellion against it. So the declaration doesn't include a call to arms; instead, it includes a call to Israel's Arab neighbors for peace.

"Great modesty"

Because Israel never declared independence but merely statehood, some have complained that the declaration itself is anemic—a weak combination of self-justification and legalistic exposition. Drafted not by the nation's writers or poets but by lawyers and politicians, it may legitimate the state but it hardly stirs its citizens to any kind of action.

This was one of the factors behind a contemporary expression of disappointment by Uri Yadin, one of the lawyers who had collaborated with Beham in working on the drafts. As he confided to

his diary at the time:

> It was a terrible disappointment for me; a deep depression descended upon me. The ceremony in the museum before a small audience, as though this was hidden. Without celebration, without an uplifting of the spirit, without inspiration of the historic hour. Such was the content of the declaration: watered-down, without strong emphases, confused, lacking all daring, decisiveness, or pride. What a distance between this speech-in-a-Zionist-committee and the ringing echoes of destiny we hoped would be sounded by the declaration.

Others have sounded a similar note from time to time. In response to such criticism, Elyakim Rubinstein, a former Supreme Court justice, has maintained that the declaration does indeed convey a "spirit of celebration." But, whichever side one comes down on, there was and is a larger issue here.

America's declaration is strident and bold because the resolve of American colonists needed to be stiffened. After all, they shared language and descent with their British overlords. They had once been loyal subjects of the same king, and now they were taking up arms against their brethren.

The Jews dwelled alone, and they knew it. They didn't have to be told that they must fight, because they knew that if they didn't, they would perish. No American colonist had anything like the Holocaust in the back of his mind.

What is more, the y*ishuv* had been in a state of preparation for years. Arab attacks that had grown in intensity after November 1947; threats by Arab states to invade; the knowledge that Holocaust survivors, family, were still being turned away from Palestine's shores—all of these meant that there was no need for a call to arms. In fact, the clandestine armies were already in place. All they needed now were real arms, which would begin to flow in with independence.

In this light, the declaration shared something of the character of the ceremony in which it was read out 73 years ago. This is how the journalist and Zionist functionary Yitzḥak Ziv-Av, who attended the proceedings, described them only a few days later:

> The ceremony was very brief, slightly hurried, overly dry and without external markings of festivity. No features stimulating excitement or imagination. The ceremony began with the pounding of a gavel, and without words. With nothing more than a gesture of his hand Ben-Gurion invited us to stand for the singing of the anthem. While some might have expected to hear grand words—about fire, blood, shadows of the past, an end to subjugation, and an historical occasion—these words were not voiced. Everyone kept his emotions inside. One day we will appreciate the great modesty with which an embattled nation declared its state, its dream that had come true. Some perspective of time is needed for a person to understand that those 33 minutes changed him to the core—himself and every other Jew.

Indeed, the restraint in the document, as in the ceremony, was in some ways deceiving. Golda Meir, one of the two women signatories, described Shertok as "very controlled and calm as

compared with me." But, she would write in her memoirs,

> he later told me that when he wrote his name on the scroll, he felt as though he were standing on a cliff with a gale blowing up all around him and nothing to hold on to except his determination not to be blown over into the raging sea below—but none of this showed at the time.

That is perhaps how best to appreciate the character both of the declaration and of the mood on that day in May: a lifeboat being outfitted in the midst of a brewing storm by a crew unbendingly determined to prevail even as the winds howl about them, water cascades over the deck, and shoals loom ahead.

ADVANCING JEWISH THOUGHT Mosaic

WHY ISRAEL IS CALLED ISRAEL AND NOT JUDEA

The name Israel came by a process of elimination, because there wasn't time to come up with anything better.

June 10, 2021 | Martin Kramer

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This is the third installment in the historian Martin Kramer's series on how Israel's declaration of independence came about, and what the text reveals about the country it brought into being. Previous installments can be seen here.—The Editors

The graves of David and Paula Ben-Gurion. *David Rubinger/CORBIS/Corbis via Getty Images.*

Modern Zionism was based on the principle that, in the absence of sovereign statehood, Jewish identity could no longer be secured. The world had become divided into nation-states with defined borders; in such a world, Jews could not long thrive, or even survive, as the perennial and universal "other." But could they really organize, create, and establish a self-governing nation-state? They had lived for two millennia as scattered religious minorities. To do otherwise, they would have to change *themselves*.

Israel's declaration of independence was an announcement to the world that, in fact, a new kind of Jew had been (re)born in the Land of Israel, and this new Jew was fundamentally different from the Jews the world had known, persecuted, and repeatedly sought to eliminate during the two millennia of Jewish dispersion. In the words of the late Meir Shamgar, who for twelve years served as president of Israel's Supreme Court, the declaration of independence was at once "the birth certificate and the identity card of the state as a political, sovereign, and independent entity."

But if the declaration was Israel's birth certificate and identity card, who issued it, and to whom, and by what authority? The identity of the entity being declared was "a Jewish state in Eretz-

Israel," but what did "Jewish state" mean to those who wrote the declaration? Can we learn anything about the identity of this new state from its name, and why was "Israel" the name ultimately preferred over other options?

Who "hereby declares"?

If you ask most Israelis who declared the state, they will answer without hesitation: David Ben-Gurion. But the document itself says otherwise:

> We, members of the People's Council, representatives of the Jewish community of Eretz-Israel and of the Zionist movement, . . . hereby declare the establishment of a Jewish state in Eretz-Israel, to be known as the State of Israel.

Each bit of that sentence tells its own story. As we saw in the previous installment in this series, when the thirty-three-year-old lawyer Mordechai Beham was given the assignment to draft a declaration of independence, he went home, pulled out his copy of the American Declaration of Independence, and identified what seemed to him the operative parts. Among them was this:

> We, therefore, the Representatives of the united States of America, in General Congress, Assembled . . . and by Authority of the good People of these Colonies, solemnly publish and declare. . . .

Beham simply copied this language and made substitutions as needed. In his first draft he wrote, in English:

> We, the representatives of the Jewish people . . . do, in the name and by the authority of the Jewish people, solemnly publish and declare. . . .

In this early draft, those declaring the state appear as "representatives of the Jewish people" and as empowered by that same people—a very large claim. At the time, the Jews in the Land of Israel numbered only about 600,000, while even after the Holocaust there were still 11 million Jews in the world, and it's anyone's guess how many of those millions were Zionists in the two countries, the United States and the Soviet Union, where the vast majority of them resided. Certainly they were not represented by any people-wide body.

No doubt this discrepancy also struck subsequent drafters as odd, because from one draft to the next they progressively narrowed both their own representative status and the authority of their popular mandate. In tracing the history of that progression—my main task in this installment—I'll be simplifying somewhat; the steps have been expounded in detail by the legal scholar Yoram Shachar, whose definitive 2002 study I've relied on throughout.

In his own last draft, Beham split the Jewish proclaimers into two parts: "we, the representatives of world Jewry in the Diaspora, and the Jewish community in Eretz-Israel." He thus proposed to rely on a bifurcated authority while still giving pride of place to Jewry abroad, in the Diaspora,

over the much smaller Jewish community in the land. This was later modified to "we, the representatives of the *Zionist movement* [emphasis added] in the Diaspora, and the Jewish community in Eretz-Israel"—i.e., those genuinely invested in the project, and organized to advance it.

Next, in the draft of May 9, prepared by Zvi Berenson, there came this refinement: "We, the People's Council, representatives of the Zionist movement and the Jewish community in Eretz-Israel": that is, an actual body, the People's Council, made up of representatives of the various Zionist and other political factions of the local Jewish community—the yishuv.

Another change occurs in the version by Moshe Shertok where "the Jewish community in Eretz-Israel" becomes "the *Hebrew* community" (emphasis added), which is also the formula in the final version—although the official English translation reverts to "the Jewish community." Then, in making his own, final edit of the document, Ben-Gurion will top things off by reversing the order, putting the yishuv first and the Zionist movement second.

Thus, in its final version, the declaration has two sources of authority: the yishuv in the land and the Zionist movement at large through these two constituencies' representatives on the People's Council. Together they make up the authors of the declaration and the founders of the state.

But where does this leave the Jewish people as a whole, who figured so prominently in the very first draft? The answer lies in the declaration, which repeatedly insists on "the right of the Jewish people to national rebirth in its own country," the "right of the Jewish people to rebuild its National Home," the "right of the Jewish people to establish their State," and most famously, "the natural right of the Jewish people to be masters of their own fate, like all other nations, in their own sovereign state." Moreover, in order to possess his or her share of this "natural right," a Jew need not even be a Zionist. That universal status will be legally enshrined in Israel's 1950 Law of Return, which stipulates that "every Jew has the right to come to this country as an *oleh*"—that is, as an immigrant automatically entitled to citizenship by dint of being a Jew.

Still, there is a distinction to be drawn, and it is this: while the entire body of the Jewish people has the right to a state, only the yishuv and the Zionist movement have the *authority* to declare the state, because they constitute those who have undertaken a voluntary act by joining the Zionist movement, or the Jewish/Hebrew yishuv, or both. The Zionist movement claims that right for the Jewish people as a whole; the Jewish/Hebrew yishuv living in the land is the movement's vanguard. As set up in the successive recensions of the declaration, the relationship among the three elements is called by Yoram Shachar a hierarchy of Jewish parents and Jewish witnesses: "Zionists and Hebrews establish the state, and the rest of the Jews, because they chose another identity, are invited only to stand on the sidelines."

It was Ben-Gurion who in the final version specified the role of those on the sidelines. The draft that came into his hands included this passage: "We appeal to the Jewish people throughout the world to rally around the Jews of Eretz-Israel, and to volunteer to stand by them." Ben-Gurion introduced two charged words: "Diaspora" and "aliyah." His version: "We appeal to the Jewish people throughout the Diaspora to rally around the Jews of Eretz-Israel in the tasks of aliyah and upbuilding."

This is pure Zionism in the Ben-Gurion tradition: you Jews elsewhere are living in dispersion; your role is to assist us in bringing you home.

Jewish or Hebrew?

The relationship defined by Yoram Shachar as a "hierarchy" has been defined somewhat differently by the Israeli writer and educator Assaf Inbari. For him, it expresses a "fundamental source of tension" within Zionism itself, which "vacillates between 'the old Jew' and 'the new Hebrew.'" The result, according to Inbari, is "a confused definition of self" that in the declaration is to be "found behind the [deceptively] decisive 'we' of those who 'hereby declare.'"

Zionism may indeed vacillate between these two identities. But the declaration really doesn't; it is squarely in the corner of "the new Hebrew." Its preference for "Hebrew" over "Jewish" is entirely lost in the hasty English translation, which was made for foreign consumption, and also in the official translation that wasn't prepared until 1962. There, *ha-yishuv ha-ivri* is rendered simply as "the Jewish community," no doubt because the translators felt that "Jewish," by emphasizing the element of shared solidarity, would resonate with the Jews of America whereas "Hebrew" would have been bewildering if not alienating. Besides, "Jewish community" had been standard English usage in the mandate period, and departing from it would have raised eyebrows.

To the English reader, then, it can all appear seamless: the Jewish people produces the Jewish yishuv, which creates the Jewish state. In fact, however, embodied in the declaration is a contrasting series of ruptures: the Jewish people produces the *Hebrew* yishuv, which creates the *Israeli* state.

Ben-Gurion's emphasis on the Hebrew character of the new state is nicely illustrated in an amusing story from the time. Truth to tell, the 37 actual signatories of the declaration didn't much look like "new Hebrews"; to the contrary, quite a few looked like "old Jews." Fully 27 of them had been born in tsarist Russia, four in the Austro-Hungarian empire, two in Germany, one in Romania, one in Denmark, and one in Yemen. Exactly one, from Tiberias, was native-born. Of the 36 immigrants, moreover, only nine—the most veteran being Ben-Gurion and Shertok— had come to the country before World War I, with the rest arriving during the British mandate.

Herzl Rosenblum, born in Lithuania, a follower of the Revisionist leader Vladimir Jabotinsky, was one of the latecomers. After studies in Vienna, he arrived in mandate Palestine in 1935, became a journalist writing under the pseudonym of Herzl Vardi (*vered* is "rose" in Hebrew), and in the People's Council would represent a small faction that had broken away from the Revisionists. Here is his account of his signing:

> When my name was called, I ascended the platform prepared to sign my name which, as you know, is Dr. Herzl Rosenblum, the name I always use. Mr. Ben-Gurion turned to me and, in a peremptory tone, ordered: "Sign Vardi, not Rosenblum!" Because of

> the excitement of the occasion I couldn't grasp why I was asked to sign in this abbreviated way. Vardi was my *nom de plume*, my pen name. . . .Had I been in a more "balanced" frame of mind, I perhaps might have added Rosenblum in parentheses, but at that moment I obeyed him unthinkingly. . . . A year later I did officially change my name [to Vardi], but I don't use it. I leave that to my son. Some time afterward, I encountered Ben-Gurion and asked him why he had requested that I sign as I did. His reply was that he wanted as many Hebrew names as possible to appear on the document.

Ben-Gurion would become well-known for insisting that civil servants and military officers Hebraicize their names. The following month, swearing in the general staff of the new Israel Defense Forces, he insisted that each officer choose a Hebrew name right on the spot. "Some resisted and asked for more time," recalled one senior commander. "But Ben-Gurion, good-naturedly, pushed them: choose a name, or I'll choose one for you."

The chance choice of Israel

At the conclusion of the declaration, another transition occurs: *ha-yishuv ha-ivri*, the Hebrew yishuv, is succeeded by *m'dinat Yisrael*, the state of Israel. The climax of Ben-Gurion's reading came with these words: "We hereby declare the establishment of a Jewish state in Eretz-Israel, to be known as the State of Israel." This was the culmination, the applause line.

Until that moment, in fact, very few people knew what the state would be named. In the declaration's successive drafts, the space had been left blank. In Washington, where the Jewish Agency's diplomats had gone to secure an advance promise of official recognition, they couldn't tell the Americans what the name of the state would be. As Clark Clifford, Harry Truman's legal adviser, would later recall, "most of us assumed the new nation would be called Judaea." Even the letter extending recognition that had been prepared for Truman on May 14 was typed as follows: "The United States recognizes the provisional government as the de-facto authority of the new Jewish state." On it, presumably at the last minute, an unidentified hand would cross out "the new Jewish state" and in its place write "the State of Israel."

How was the name decided? By a vote in the People's Administration, the cabinet-in-waiting, on May 12. The protocol of the meeting, silent on the details of the debate, simply records Ben-Gurion as saying:

> We have decided that the name of the state will be Israel. And if we also say [the word] "state," then the State of Israel. . . . To this can be added every word in the [Hebrew] grammatical construct form: army of Israel, community of Israel, people of Israel.

Ben-Gurion then put this "decision" to a vote. According to the protocol, seven of the ten members voted in favor; opposing and abstaining votes weren't recorded. In his 1962 book *Three*

Days, the cabinet secretary Zeev Sharef would write that the decision was arrived at "in the absence of any other suggestion."

But we do know rather more about a debate that *preceded* this vote, and from two sources: first, what Sharef told a journalist in May 1949, on the first anniversary of independence; second, a recollection by the chief opponent of the name Israel.

This is what Sharef told the journalist Moshe Brilliant, who published his report in what was still called, even in 1949, the *Palestine Post* (later the *Jerusalem Post*):

> Most people had thought that the state would be called Judea (*Y'hudah* in Hebrew). But Judea is the historical name of the area around Jerusalem, which at that time seemed the area least likely to become part of the state. Also, it applied only to a very small territory. So Judea was ruled out.

From its outset, as we have seen, Zionism had spoken of creating a *Jewish* state, and so did the UN's 1947 partition plan. As "Jewish" was a derivative of Judea, the name might therefore have seemed a logical choice. But according to the partition plan, all of the traditional geographical area of Judea was slated either to be internationalized (in the case of Jerusalem and its environs) or to become part of the proposed Arab state. A Jewish state named Judea that didn't include the geographical Judea would have been, to say the least, an anomaly.

Moreover, even if it did wind up possessing some chunk of Judea, the Jewish state would also comprise a much larger area than that, including the coastal plan, the Galilee, and the Negev; how could a state be called Judea when most of it was something else? Besides, what would its citizens be called? *Y'hudim*? How would that be regarded by the state's projected half-million Arab citizens?

With Judea ruled out, another suggestion, Sharef told Brilliant, was Zion—"but Zion is the name of a hill overlooking the Old City of Jerusalem" and therefore not intended by the UN's partition plan to be within the borders of the proposed Jewish state. True, even the Bible refers to Jerusalem and sometimes to the entire Land of Israel as Zion, and in that sense the name had been adopted by the "Lovers of Zion" movement in the 19th century and then, obviously, by the Zionist movement itself. But for a sovereign Jewish state-to-be, actual geography mattered; how could such a state be called Zion when Mount Zion wasn't going to be a part of it? And what would a citizen of such a state be called? A Zionist? That would again be to ask a great deal of Arab citizens, while also creating confusion with Zionists living in the United States.

Here is Sharef once more, as quoted by Brilliant: "One man proposed '*Ever*'—the root [form] of '*ivri*,' which means Hebrew. No one liked it." Sharef doesn't say why no one liked it. The word was certainly connected to the idea of the "new Jew" as a Hebrew, and presumably the citizen of such a state would have been called an *Ivri*, a word otherwise beloved by Ben-Gurion and others. But "*Ever*" also had a geographical association, "crossing over," and in one interpretation it referred only to the land west of the Jordan River, which could have struck some as too limiting.

Again, Sharef: "Eretz-Israel, the Hebrew biblical name for Palestine, was [also] ruled out, because of the dangers involved in its irredentist flavor."

Why dangerous? Aside from its association with the biblical past, Eretz-Israel under the British mandate had been the official Hebrew name of the entire country—the Hebrew equivalent of "Palestine." The UN plan had called for a division of "Palestine," and even though the declaration was careful not to refer to this as a *partition* plan, no one wanted openly to defy the UN, either. Calling the state Eretz-Israel would have sounded like an overt claim to all of mandatory Palestine. So it was ruled out as well.

Back to Sharef:

> It was Mr. Ben-Gurion who first suggested "Israel." It seemed strange at first, and the proposal was received coolly. But members tried pronouncing "Israel government," "Israel army," "Israel citizen," "Israel consul" to see how it sounded. Most were unenthusiastic, but there were only 48 hours left and much urgent work to be done, and the matter was put to a vote. Seven of the ten members present voted for Israel.

The name "Israel" thus came to the state by a process of elimination, because there wasn't time to come up with anything better. A majority voted for it—unenthusiastically.

The lost case for Judea

This brings us to the most cogent argument *against* the choice of "Israel." It came from Yitzḥak Gruenbaum, the foremost secular leader of Polish Jewry between the two world wars, chairman of the Jewish Agency Rescue Committee during the Holocaust, and Israel's first minister of the interior.

Years later, Gruenbaum, who had favored the name Judea, explained his rationale in these words:

> I opposed the name Israel. It reminded me of the name *israélite* [in French], used by non-Jewish sympathizers and assimilationists instead of *juif*, which was considered derogatory. [But we] Zionists *embraced* the derogatory "Jew," which was the name of our people since the return from [Babylonian] exile and the building of the Second Temple. The independent Hasmonean state, also after the Roman conquest, had this name. I favored the revival of this name, which the masses of the [Jewish] people accepted in their spoken languages. Another name was liable to divide the state from the Diaspora.

For Gruenbaum, then, reminiscing in 1961, the name Judea had the advantage of creating continuity through the 2,000 years of the dispersion of the Jews, an idea that had also been embraced by the Zionists in campaigning for a Jewish national home and a Jewish state. Calling the state Judea would therefore not only emphasize that continuity in time but would also link the new state to present-day Jews everywhere.

Gruenbaum lost the argument for the reason we've already seen: geographically, Judea was too small and in any case not slated to be in the envisioned state. As he stipulates, "the majority accepted Ben-Gurion's proposal . . . because the borders of our state are wider than those of the Hasmoneans." But he goes on to insinuate that geography wasn't the real reason Ben-Gurion had come to prefer Israel:

> I had a feeling that Ben-Gurion didn't reveal the real reason behind his proposal, which was adopted. Unfortunately, it was realized after a few years that the name "Israel" created a misunderstanding among native-born *sabras*. The *sabra* began to see himself as an Israeli and not as a Jew.

In other words, Ben-Gurion's "real reason" was the same as Shertok's reason for preferring the term "Hebrew yishuv" to "Jewish yishuv." What he wanted was not continuity but a *rupture* of continuity—a break with the exilic Jewish past—and not a bridge to the Diaspora but the latter's subordination to and eventual absorption into the new state. By the choice of the name Israel, he was out to create a new identity, building upon Jewish identity but superseding it.

Gruenbaum himself wasn't religious. To the contrary, he was a declared secularist who ended up in the socialist Mapam party. His preference for the name Judea was thus not based in a desire either to shackle the state to religion or to stake a claim to territory. But he did want a name that bound the state to Jewish history and not just to Israelite antiquity. His sense of alarm over secular "native-born *sabras*" ceasing to regard themselves as Jews was directly related to this point.

Nor, in 1961, was Gruenbaum alone among his countrymen in that sense of alarm. Indeed, at that very moment, Ben-Gurion himself had taken a major step toward reminding young Israelis that they were Jews after all. The previous year, Israel had seized the former SS officer Adolf Eichmann, a major organizer of the Holocaust, and in 1961 put him on trial for crimes committed against Jews murdered in Europe before the birth of the Jewish state. Israel's unilateral action aroused its share of critics in the West—among them the editors of the *Washington Post*, who in an editorial asserted that Israel had no claim to represent or to act on behalf of the Jewish people as a whole. Ben-Gurion's reply:

> The *Washington Post* writer is perhaps unaware that on May 14, 1948, we proclaimed the establishment of a Jewish state, in accordance with the decisions of the United Nations (which were backed by the United States as well as other countries), and Israel is only the name of the Jewish state.

The state, Ben-Gurion was saying, was a *Jewish* state; its name was but a convenience. Had Ben-Gurion, years after his choice of Israel's name, reached the same conclusion as Gruenbaum? Through the Eichmann trial, was he trying to slow or divert the drift of young Israelis away from Jewish peoplehood? Many historians believe so.

In the end, the choice of the name Israel would pose as many questions as it answered. Meir Shamgar, the Israeli Supreme Court justice whom I quoted earlier, had described the declaration

as Israel's "identity card." In reality, it was and it remains impossible to reduce to a card the identity even of a single individual, and certainly not of a polity as diverse as the state of Israel.

The end of political Zionism

One thing the declaration did do for sure: it affirmed the ascendancy of Israel over Zionism, if not the end of Zionism itself.

Indeed, so fixed is the declaration on the centrality of the Hebrew yishuv that its drafters almost failed to mention Theodor Herzl, under whose portrait Ben-Gurion stood in declaring the birth of the state. It was Zvi Berenson who, when the draft reached him, noticed that although Lord Balfour had earned a mention in connection with the Balfour Declaration, Herzl, the founder of modern political Zionism, was entirely absent.

The omission was duly rectified. But this doesn't change the fact that what stands front and center in the declaration is not the world Zionist movement but the Hebrew yishuv. There is no mention in the document of Zionist diplomacy or of the persistent lobbying and exercise of influence that secured such international licenses as the Balfour Declaration, the League of Nations mandate, and the UN partition plan, and that in 1948 was in full operation to persuade U.S. President Harry Truman to recognize the new state.

Instead, we read that "pioneers, defiant returnees, and defenders made deserts bloom, revived the Hebrew language, built villages and towns, and created a thriving community controlling its own economy and culture, loving peace but knowing how to defend itself." The Hebrew yishuv could certainly take credit for these things (although, initially, the revival of the Hebrew language in particular owed more to Odessa and Warsaw than to Tel Aviv). But in placing the yishuv *before* the Zionist movement in the declaration, Ben-Gurion imposed a clear hierarchy on their relative roles and contributions.

Earlier, and until then, the yishuv had been in a real sense an extension of the Zionist movement. Zionist congresses had convened in Europe, not Palestine, and the yishuv had relied on influential Jews elsewhere to represent its interests in world capitals. In putting pioneering above lobbying, the declaration now proclaimed the independence of the Jews of Eretz-Israel from the Zionist movement. With statehood and sovereignty, the balance of power shifted, and was bound to shift, toward Israel, and there it has remained ever since.

This is best exemplified in the story of a name missing from the list of signatories. Certainly the greatest of the Zionist lobbyists was Chaim Weizmann, who, from the 1917 Balfour Declaration onward, played a crucial if not decisive role in securing every form of international sanction for Zionism. By 1948, Weizmann was old and ill, yet still he traveled to America to put his prestige to work at the last minute in securing the support of Harry Truman.

After the declaration in Tel Aviv, a bellboy at the Waldorf Astoria hotel in New York handed Weizmann a cable from the new Provisional Government. Signed by Ben-Gurion, Shertok, and Golda Meyerson (Meir), among others, it read: "Of all those living, no one contributed as much as you to the creation" of the state. A few days later, the Provisional Government elected Weizmann as Israel's first president.

Yet Ben-Gurion had not invited Weizmann to sign the declaration of independence. True, technically speaking he wasn't a member of the People's Council, all of whom did sign. But the withholding of even an invitation rankled. Norman Rose, one of Weizmann's biographers, has imagined how so distinguished and venerable—and proud—a figure might have reacted:

> Was he not the most eminent of those who had struggled for Israel's independence? . . . Running his finger down the list of names, he stumbled on non-entities, mere party hacks raised to such heights only through political wire-pulling. He heard the lawyers and pedants arguing that he was . . . ineligible for inclusion among the chosen. But only pettifogging quill-pushers whose minds did not extend beyond their legal jargon would accept this as sufficient cause for his exclusion. Surely these legal niceties were as nothing when thrown into the balance against his record? Was this not, then, a deliberate slight to his person? Weizmann's suspicious nature would not exclude such an explanation.

Meyer Weisgal, a prominent Zionist activist who was Weizmann's man Friday, would echo this complaint in his own memoirs. Technically, he admits, Weizmann wasn't a member of the group entitled to sign. Yet the declaration

> was not a technical document. . . . Every name affixed to it was an everlasting honor for the generations to come. Its text and signatories would be reproduced thousands of times over in history books and first-grade primers. Moreover, twelve, I repeat twelve, of the signatories of the declaration of independence were not in Tel Aviv when it was signed. Ten of them were in Jerusalem. Two of them were as far abroad as was Weizmann—in New York. Yet place was left for *their* signatures. Could not the same consideration have been extended to Weizmann? Apparently not. So the question remains: was there design? I have an opinion but not an answer. There was a long-range view of history behind this technical omission.

Weizmann often complained about his exclusion—Weisgal said it "wounded him deeply"—but he was too proud to ask Ben-Gurion or the cabinet for its rectification, or to allow any of his friends to ask on his behalf. In 1957, five years after Weizmann's death, Weisgal tried to persuade Ben-Gurion to have Weizmann's signature copied onto the declaration. Ben-Gurion's reply: "Weizmann doesn't need it."

Weisgal was right that a "long-range view of history" was behind the omission, but not in the way he thought. There may be something to his implication that Ben-Gurion was out to grab all the credit for the state's establishment and write Weizmann out of the story, but we've already seen enough to understand that the logic behind his exclusion is to be found in the document itself,

whose wording glorifies the “Hebrew” pioneer at the expense of the Zionist diplomat and demotes the Zionist movement from the progenitor of the state to its subordinate.

Weizmann’s role had been to persuade the likes of Lord Balfour and Prime Minister Lloyd George to issue favorable declarations and uphold them. But the meaning of independence was that Israel henceforth would issue and uphold its own declarations. If none of the signatories on that day had contributed as much, for so long, as Weizmann, it was only because their contributions lay ahead of them. Of the 37 signatories, two aside from Ben-Gurion would become prime ministers, one would become president, sixteen would serve as government ministers, and 25 would become elected members of the Knesset.

So the declaration of the state also declared the end of classic political Zionism in the tradition of both Herzl and Weizmann. Ben-Gurion later went so far as to announce that after the creation of the state, he no longer saw even himself as a Zionist. The goal had been achieved.

And yet: as we shall see in next month’s installment, turning a page on political Zionism was one thing; turning a page on the religion of the Jews would be something else altogether.

ADVANCING JEWISH THOUGHT Mosaic

DID ISRAEL'S FOUNDERS DECLARE A SECULAR STATE?

Going by the usual telling of the founding, religious and secular Jews clashed over whether Israel's declaration should evoke God's covenantal promise. How accurate is that account?

July 20, 2021 | Martin Kramer

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This is the fourth installment in the historian Martin Kramer's series on how Israel's declaration of independence came about, and what the text reveals about the country it brought into being. Previous installments can be seen here.—The Editors

David Ben-Gurion signing the Israeli Declaration of Independence held by Moshe Sharett with Eliezer Kaplan looking on on May 14, 1948. *National Photo Collection of Israel.*

If today's Israelis know one thing about the debate surrounding their country's declaration of independence, it can be summed up in two words: *Tsur Yisrael,* "the Rock of Israel." The declaration ends with these words: "Placing our trust in the Rock of Israel, we affix our signatures to this proclamation." The debate over the formula is famous because some of it took place in public—that is, at a meeting of the People's Council on May 14 just hours before independence was declared.

The usual telling of the story goes like this: at the Council meeting, religious Jews clashed with secular Jews over whether to link their names to an explicit announcement of their trust in, specifically, God. The argument went back and forth until David Ben-Gurion proposed that everyone sign while placing trust not in God but in a substitute expression: *Tsur Yisrael,* "the Rock of Israel."

Further debate ensued. On the one hand, was not this formula itself just one of the fixed epithets of God, which is how it functions repeatedly in the Hebrew Bible (see Genesis 49:24, 2Samuel 23:3, Isaiah 30:29, Psalms 19:15, etc.) and in Jewish liturgy? Or, on the other hand, could it be seen simply as a euphemism for the rock-like inner strength of the *people*? Either way, it proved sufficiently vague that, for separate reasons, both an Orthodox Jew and an atheistic Communist could accept the phrase and sign. And so they did, thereby lending a sheen of consensus and unity to the first jujitsu match between religious and secular in the history of the state.

So the story goes. But how and where did this ingenious formula crop up in the first place? Once again, we are indebted to the legal scholar Yoram Shachar for getting to the bottom of the matter. In fact it wasn't introduced at the last minute by Ben-Gurion (soon to serve as Israel's prime minister), or before him by Moshe Shertok (soon to serve as Israel's foreign minister), or before him by the jurist Zvi Berenson. Rather, it was in the very first draft of the declaration, drawn up three weeks earlier by the young lawyer Mordechai Beham, whom we've met earlier in the second installment of this series. The debate on May 14 was thus only over whether to *keep* it in, and the real story is how it got it into the first draft.

That story involves a great deal more than a single formula. A crucial issue at debate among the framers was how the state being declared should assert its claim to the land, and, in that context, whether reference should be made to a divine promise going back to the biblical patriarchs. As we shall see, the earliest drafts did just that. But, in later drafts, all mention of the divine promise was cut—with the result that, by May 14, the sole remaining allusion to God, and then not by that name, was in the concluding passage placing the signers' trust in the Rock of Israel.

Before coming back to that final moment, let's begin at the beginning.

Who promised the land?

Mordechai Beham, the Tel Aviv lawyer who prepared the declaration's earliest draft, was affiliated with the legal department of the state-to-be. Born in Ukraine, the son of a lawyer, educated in law at the University of London, and formerly employed by the British mandate administration, Beham was a totally secular man, unfamiliar with Jewish sources. Three weeks before the end of the mandate he received the assignment to come up with a draft, and went home perplexed. Where to start?

Beham decided to consult his neighbor, Rabbi Harry Zvi Davidowitz, another sort of man altogether. Having studied as a youth in Lithuanian yeshivas, Davidowitz left for America with his parents in 1903. There he earned an undergraduate degree at Columbia University and completed his studies for the Conservative rabbinate at the Jewish Theological Seminary; his PhD dissertation at Dropsie College was on Arabic influences in the works of Maimonides. During World War I, he served as a U.S. military chaplain in France and later held pulpits in Philadelphia, Atlantic City, and Cleveland.

In 1934, Davidowitz spent an enjoyable sabbatical leave in Tel Aviv and decided to stay there. While running a factory, he developed a second career as a translator, becoming the first to produce Hebrew renditions of Shakespeare's *Hamlet*, *A Midsummer Night's Dream*, *Macbeth*, *The Winter's Tale*, *King Lear*, and *Othello* as well as of the Old English epic *Beowulf* and Chaucer's *Canterbury Tales*. Over the years, his ritual observance of Judaism diminished, but he remained deeply learned and owned a substantial library of books on Jewish and other subjects. More to our point here, Davidowitz in Shachar's view "had total faith in the divine source of the right of the Jewish people to the Land of Israel."

Beham, upon entering his neighbor Davidowitz's library, did two things. First, he copied out key passages from the American Declaration of Independence. Next, he transcribed passages from the King James Version (KJV) of the Bible relating to God's promise of the land—and this passage in particular:

> Behold, I have set the land before you, go in and possess the land which the Lord sware unto your fathers, Abraham, Isaac, and Jacob, to give unto them and to their seed after them. (Deuteronomy 1:8)

Why this, and why not copy it in Hebrew? As concerns the latter question, Beham probably thought the primary audience for the declaration would be foreign, and, for a London-educated barrister, it was no effort to collect material in English. As to the former question: here, unequivocally, the land of Israel is the "promised land," given to the people of Israel by divine ordinance.

And that is exactly how Beham began his very first draft in English: "Whereas this Holy Land has been promised by the Lord God to our fathers, Abraham, Isaac, and Jacob, and to their seed after them. . . ." As for Beham's Hebrew text, it renders the KJV's "Lord God" as *Tsur Yisrael,* the Rock of Israel; in a later and even more explicit Hebrew version, it would appear as *Elohei Yisrael*, the God of Israel.

Shachar speculates that all of this came to Beham from Davidowitz. Beham didn't know his Bible, and prayer was foreign to him. Nor, as a practicing lawyer, had he ever given much thought to the basis for the Jewish claim to the land. Somehow Davidowitz imparted to him not only the biblical rationale but also the phrase *Tsur Yisrael* as one of the names of God.

For some members of the People's Council, needless to say, this formula would prove provocative on three counts: first, in asserting that there was a God; second, in stipulating that He was Israel's special God; and third, in stating that He promised the land to the Hebrew patriarchs. Indeed, it may be doubted that most Zionists in the Land of Israel *circa* 1948 subscribed to all or even most of these assertions. For them, the land of Israel was not a holy land promised by God but the homeland vouchsafed to the Jews by history.

Take, for one key example, David Ben-Gurion. In a 1968 interview that first appeared in the 2016 documentary film *Ben-Gurion: Epilogue*, the founding father was asked whether, like the ancient prophets, he himself turned to God for fortitude. Ben-Gurion replied, in a mocking tone:

> Does God live in some place where you can contact Him? Did the prophets go to see God? They wrote down His address and went to see Him? Speaking to God [means] thinking deeply about something.

To the extent that Ben-Gurion did believe in God (and he sometimes claimed to), his was not a communicative God but One who didn't intervene in human affairs and certainly didn't make promises.

And so it is no surprise that, during subsequent redrafts of the declaration, God's promise to the patriarchs went missing, and the basis of the Jewish right to the land was asserted to reside in history. One such version began: "Whereas the Jewish people is linked from the beginning of its history to Eretz-Israel. . . . " A subsequent one offered: "By virtue of the unbreakable historic and traditional connection of the people of Israel to Eretz-Israel. . . . ." Prominent documents recognizing this "connection" were also cited, among them the Palestine mandate and the partition plan adopted by the UN General Assembly in 1947. God's promise to Abraham lay on the cutting-room floor.

By the time Moshe Shertok presented his own redraft to the People's Administration, there was no mention of any historical event prior to the exile of the Jews from the land after the Roman conquest of Jerusalem and destruction of the Second Temple in 70 CE. At that point, one of the members, Bechor-Shalom Shitreet, expressed his disappointment:

> The declaration begins with the people being exiled from its land. Before it was exiled, there was something: a people that upheld its religion and tradition. And it's impossible not to mention our Book of Books.

Shertok thought all of that would be superfluous: "I deliberately began with the exile," he explained:

> I thought: I can't include everything going back to Abraham. I imagine that educated people know these things. No one denies that the people of Israel inhabited its country and gave the world the [Hebrew Bible]. The dispute begins with the return of the people to its land.

Here I will add a speculation of my own as to *why* Shertok and the legal department would have wished to omit mention of the promise to Abraham. Rather than an ideological aversion to citing the divinity, their reason may have been more practical. As we shall see, the declaration would make much of the November 1947 UN resolution as a license to create a Jewish state. But with that license had come the partition plan itself, which also licensed the creation of an Arab state.

By contrast, the promise that Abraham received from God had come neither with a map nor with instructions for sharing the land with anyone else. So, in accepting the UN resolution, the Zionist leadership might appear on the face of it to be forgoing half of the territory that God Himself had promised to the patriarchs. That half, moreover, included the two most prominent places identified with the patriarch Abraham: Mount Moriah, where he nearly sacrificed his son Isaac, and his own burial place in Hebron in the Cave of the Patriarchs. According to the UN, the first of

these was to become a part of an internationalized Jerusalem, and the second to be included in the Arab state.

In the founders' thinking, should the declaration of independence go out of its way to remind the new Israelis of a promise their leaders hadn't realized? When one of their aims was to win recognition of the state by the international community, should the declaration of independence insinuate that perhaps the Jewish state wasn't so reconciled to partition?

If my speculation is correct, then God's promise to Abraham fell by the wayside not just because the drafters didn't believe it ever happened but because highlighting it would embarrass the new state both at home and abroad.

It was Ben-Gurion who tried to fill the historical gap. He did so, on the eve of the last day, by summarily adding a new opening paragraph to the declaration's then-final draft. It affirms:

> Eretz-Israel was the birthplace of the Jewish people. Here their spiritual, religious, and political identity was shaped. Here they first attained to statehood, created cultural values of national and universal significance, and gave to the world the eternal Book of Books.

In this formulation, the right of the Jews does go back to the beginning; it arises, however, not from divine designation but from the birth of the people in the land and then a series of further firsts, including ancient statehood. The world is reminded of the Book of Books, but God is not cited as the author and the book is not called sacred but instead "eternal," a book shared by the Jewish people with all mankind.

Nor is this Ben-Gurion's only careful focusing of the declaration's historical claims. Tellingly, the new opening evades the revelation at Mount Sinai, where Israel received the Law. A believer might argue that the Jewish people, as a people, first arose *there*. But that event took place outside the land; instead, the declaration asserts, everything significant in the formation of the Jewish people happened *here*.

Once again, the point is to strengthen the crucial claim that the new state is being proclaimed "by virtue of our natural and historic right and on the strength of the resolution of the United Nations General Assembly." Ultimately, these are the claim's two foundations: "natural right," which echoes Thomas Jefferson's "laws of nature and of nature's god" in the American Declaration of Independence; and "historic right." Both are bolstered through having been recognized by the international community in the form of the UN.

Naturally, Ben-Gurion's omission of the divine promise drew unfavorable comment. Thus, at the May 14 meeting just prior to the ceremony proclaiming independence, David-Zvi Pinkas, of the religious-Zionist Mizraḥi movement, argued that the declaration should have opened with this passage: "Eretz Israel is the land given to the people of Israel according to the Torah and the prophets."

Two days later, *after* the state was declared, a further series of reservations was issued by Meir David Levinstein, who headed the Tel Aviv branch of Agudat Yisrael. The declaration, he said, ignored "our sole right to Eretz Israel, based on the covenant between God and our father Abraham and the many promises that recur in the [Bible]." Moreover, the declaration also ignored "the special character of our land, a holy land, designated for the people of Israel not just for its independent rule but above all for leading a life of holiness and purification."

Yet, despite their strong dissents, both of these two men, as well as their like-minded colleagues, had signed the declaration. Why?

For Levinstein the answer lay in the urgency of the present moment and the imminent outbreak of war, which demanded Jewish solidarity. He signed, in his words,

> in recognition of the heavy responsibility and the danger that surrounds us on all sides, so the peoples of the world would not interpret our reservations over the secular form and formula of the declaration as a division within the camp of Israel.

Years later, Rabbi Kalman Kahana, an ultra-Orthodox signatory from Poalei Agudat Yisrael, said something similar:

> Everything was subsumed under one question: how to strengthen the security of the state, how to do that so it could withstand the attacks. It was a real matter of *pikuaḥ nefesh*, and because of *pikuaḥ nefesh* we had to make concessions, which under other circumstances we certainly wouldn't have made.

Pikuaḥ nefesh, which might be described as the emergency provision in Jewish law, is the principle that preserving human life trumps almost any strictly religious consideration.

But this suggests that the declaration did not, in fact, reflect some kind of perfect consensus among religious believers, secular non-believers, and in-betweeners. Rather, the religious believers were prepared to sit on their reservations because of the emergency—and also because, in 1948, they were still very much in the minority. Yes, all parties had signed; but some did so because of their agreement with it, others despite their disagreements with it.

Which brings us back to *Tsur Yisrael*.

Rocky interpretations

One of the things that made it possible for the believers to sign was the presence of these words at the very end: "Placing our trust in the Rock of Israel, we affix our signatures to this proclamation." This, too, can be precisely traced to the words of the American founders that Mordechai Beham copied out from the Declaration of Independence: "And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor."

In translating the passage into Hebrew, as we have seen, Beham rendered the phrase "Divine Providence" as *Tsur Yisrael*. Whether or not this owed directly to Rabbi Davidowitz's influence, as Yoram Shachar is convinced, the important point is that—unlike the specific invocation of God's promise to Abraham—the mention of *Tsur Yisrael* survived the many redrafts and edits until it reached the very end of the process. Then and only then did objections arise, and this time not from the religious believers but from secularists and atheists.

Their problem was simple: how could they be asked to sign a declaration professing trust in a God they knew didn't exist? Wouldn't that constitute a blatant example of religious coercion, at the very birth of the state?

The debate erupted on May 13, the eve of declaration day, in the last meeting of the People's Administration. Aharon Zisling of Mapam, the party to the left of Ben-Gurion, said he couldn't express his trust in something he disbelieved: "It shouldn't be imposed on me and those like me to proclaim that 'I believe.' I ask for this passage to be deleted."

Against this, the religiously observant members pushed back hard. The remarks of Chaim Moshe Shapira, who had headed the Jewish Agency's department of immigration since 1934, and who would go on to serve as a minister in every Israeli cabinet until his death in 1970, are worth quoting at length:

> I cannot imagine that in a historic document such as this, the heavenly name would go missing. You needn't be religious, but it's unthinkable not to mention the heavenly name when we stand to establish the Hebrew state. I'm ready to take a poll of all the Jewish heretics on earth, to see if they think it's wrong. If someone can't sign the document [as it is], then we are unable to sign it in the way it's proposed by Zisling. It is difficult for us to reconcile ourselves to the omission of the God of Israel. Jews are being killed every day with "Hear O Israel!" on their lips. I would prefer "God of Israel" and not just "Rock of Israel and its Redeemer" [actually, the phrase "and its Redeemer" was not present], but the compromise has already been struck.

Rabbi Yehuda Fishman, who would become Israel's first minister of religion, chimed in: "I haven't seen a single important declaration by the nations of the world where the name of God isn't mentioned, except for [Soviet] Russia."

Ben-Gurion now had a problem on his hand. Calculating rapidly, he decided that it was Zisling who would have to stand down. "I am a person like Zisling," Ben-Gurion said—that is, a skeptic when it comes to religion—

> but I can sign this passage wholeheartedly. I understand what the "Rock of Israel" is. And the proposed compromise is a fair one of Jewish friendship. As we stand on the brink of independence, we have to be careful not to sharpen disagreements.

Shapira, seeing where Ben-Gurion had come down, then pressed his advantage to argue for adding to "the Rock of Israel" the phrase "and its Redeemer"—which, not least because the conjoined expression is a fixture in daily Jewish prayer, would make it even clearer that the

reference was to God. But now Ben-Gurion pushed back the other way: "In what is called a matter of conscience," he said, "adding just detracts. When you say *Tsur Yisrael,* for you it says everything, but I have to be able to explain to my children who aren't religious why I signed this wholeheartedly and with a clear conscience."

The issue seemed resolved, but it came up again the next day in the People's Council, with the same protagonists. Again Ben-Gurion insisted that the draft be left alone:

> Each of us, according to his way and understanding, believes in *Tsur Yisrael* as he understands it. There is no imposition or coercion—here I express my own Jewish and human opinion—when we say we trust in *Tsur Yisrael.* I know what *Tsur Yisrael* is, and I trust it. I'm sure my colleagues on the right know perfectly well whom they trust, and I also know well whom my colleagues from the other side trust. I have a request: that I not be forced to put this passage to a vote.

They didn't force him, and the passage went into the declaration as submitted.

Religion finessed

The question of religion, then, wasn't resolved by the declaration of independence. Rather, it was finessed, and Ben-Gurion could finesse it largely because five Arab armies were about to invade the country.

But if it would be a stretch to say that the declaration represented a consensus, it would be another stretch to say that it split the difference between secular and religious perspectives. Indeed, it is hard to describe the declaration, in the balance, as anything other than a secular document. Its peculiar omissions and emphases, especially in the later stages of drafting, reflected the sensibilities of the secular drafters.

Thus, the claim of the Jews to the land is based on history and natural right, not on divine promise. Similarly, Judaism is conceived as something the Jews invented themselves—and not during a mythic trek in the desert where God appeared to them but in the Land of Israel. Finally, the only promises worth anything in the present were made not by God but by Lord Balfour and the United Nations.

As a result, the semantic struggle over *Tsur Yisrael*, such as it was, came down to the minimal concession that would be required in order to secure the signatures of the religious believers. In the end, Ben-Gurion managed to put everyone's signature on the parchment just before the Sabbath came in.

Later on, however, religion, more than any other issue, would make it impossible to compose a constitution for Israel. The declaration, which ideally would have moved Israel closer to a future constitution, instead simply reflected the balance of forces at that moment in time. Nor would the religious factions, being then at a disadvantage, have had any interest in translating the

declaration into a constitution certain to incorporate the same set of preferences. In the exhausted aftermath of the War of Independence, there was no impetus to draft a constitution, and there is none to this day.

Two stories serve as fitting conclusions to this episode. First, in the process of adding his signature to the scroll, Rabbi Fishman, who would later become Israel's first minister of religion, made a small emendation. This is how he would tell the story:

> When my turn came to sign the scroll, I wrote my name just as everyone else had, but that didn't suffice for me; I wanted to add [something]. But Moshe Shertok, who was supervising the signatories, was alarmed and asked, "Rabbi Fishman, what are you doing there?" "You'll soon see for yourself," I replied. . . . He saw how I had added alongside my name four letters: *bet*, *ayin*, *zayin*, *heh*, [an abbreviation of the words] "with the help of God."

The good rabbi was proud to have slipped a surreptitious allusion to God into the declaration of the new Jewish state. Some might see that as a miniature allegory for the unfolding of religion-state relations in the years that followed.

The second story concerns the declaration's English version. Shertok, ever the diplomat, decided on the evening before declaration day that a translation into English should be released simultaneously with the Hebrew original. As he already knew that Ben-Gurion would insist on leaving *Tsur Yisrael* in the text, he worked late that night on a rendition of the term with aides who consulted the American declaration, the Bible, and even the speeches of Winston Churchill.

One member of the team was Fay Doron, an editor who had been named to direct the English-language radio broadcasts of Kol Yisrael, the Voice of Israel. She pointed out that the phrase "Rock of Israel" would go right over the heads of non-Jews, who wouldn't have a clue as to what it meant. "Divine providence," she reckoned, would also be confusing, belonging as it did more to the world of Christian than of Jewish theology. Jews and non-Jews around the world would expect to see a reference to God. So she proposed that *Tsur Yisrael* be translated simply as "Almighty God." As the meeting wound down at 4:00 in the morning, Shertok agreed: it would be "with trust in Almighty God."

By chance, however, when the English translation went out to the world media that day, it did not contain these words. The reason was that the document's final paragraph, in which they were embedded, also included the time and the place of the ceremony, two items that were supposed to be kept secret, and an overzealous censor cut the whole paragraph from press dispatches for foreign journalists. Thus, when the declaration was published in the U.S. on May 15, it didn't include any mention of an object of trust at all—which in America caused some surprise and even consternation. Only when the English text was broadcast on the Voice of Israel did listeners hear the phrase "Almighty God."

This story has two sequels. First, Some Orthodox believers in Israel would adduce the English translation as proof that *Tsur Yisrael* in the Hebrew declaration meant God after all, despite what

any secular signers might claim. One of them was the ultra-Orthodox signatory Kalman Kahana: "I saw something interesting. When I read the translation of the declaration of independence into English, I saw that there was no other possibility but to translate these words as God."

Second, however, the 1948 translation wasn't an official one; it had been done only for the convenience of journalists. The official translation was very carefully compiled only fourteen years later, in 1962. Overruling the preferences of both Moshe Shertok and Fay Doron, it read as follows: "placing our trust in the 'Rock of Israel,' we affix our signatures to this proclamation."

No doubt this was the more faithful translation, for it sought to restore the ambiguity of the original. But anyone surfing the Internet today can find the 1948 translation everywhere, often misidentified as the official translation. Moreover, later in 1948 Israel's first chief Ashkenazi rabbi, Yitzhak Halevi Herzog, would pen the prayer for the state. It begins: "Our Father in heaven, Rock and Redeemer of Israel, . . ." For many decades, untold multitudes of worshippers have recited this prayer in synagogue on every Sabbath and holiday, and there they encounter *Tsur Yisrael* as an obvious name for God. Few Israelis today believe it means anything else.

So the term would appear to have lost all of its ambiguity, which was what made it attractive to the drafters in the first place. But this, too, is not the last word. For that, we can conclude by returning to May 14, 1948.

Immediately after Ben-Gurion finished reading the declaration, Rabbi Fishman recited the *Sheheḥeyanu*, the traditional blessing of thanksgiving. This wasn't spontaneous; although many would recall being surprised, it was a planned part of the program: "Blessed are You, Lord our God, King of the Universe, Who has granted us life, sustained us, and enabled us to reach this occasion."

A wave of emotion swept the audience. Rabbi Fishman would later recall looking out of the corner of his eye and glimpsing, of all people, the radical Mapam heretic Aharon Zisling, who had tried to keep any hint of God out of the declaration. This is what he saw:

> At the museum, when I recited the blessing in front of the nation's dignitaries—suddenly I saw Zisling remove a handkerchief from his pocket and cover his bare head.

This anecdote cuts to the very essence of the paradox of what it means to be Jewish, and what it means for a state to be Jewish. It is a nationality, a history, a culture, and a religion. In each individual, as in the state as a whole, all of these elements coexist, in different proportions of immediate relevance but each with latently more significant potential. How to strike the right balance has been one of the greatest challenges facing the state of Israel. The debate over the state's declaration of independence was but the start.

ADVANCING JEWISH THOUGHT Mosaic

DID THE UN CREATE ISRAEL?

On May 14, 1948, Israel's founders wanted to emphasize to the world that while the Jewish people had been born in the Land of Israel, its state was the adopted child of the United Nations.

August 10, 2021 | Martin Kramer

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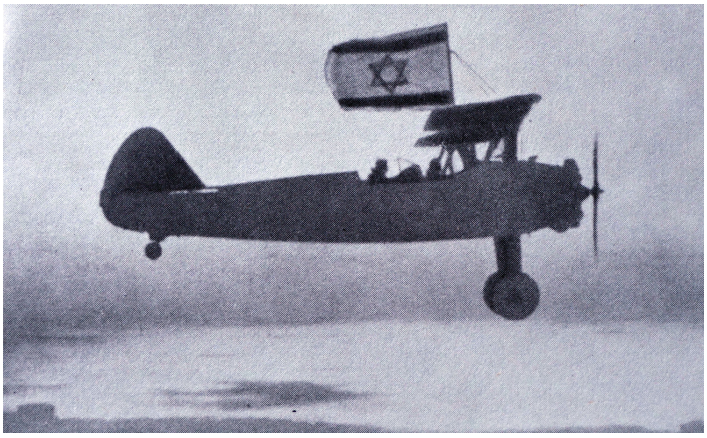
This is the fifth installment in the historian Martin Kramer's series on how Israel's declaration of independence came about, and what the text reveals about the country it brought into being. Previous installments can be seen here.—The Editors



An early Israeli aircraft during the War of Independence in 1948. *Universal History Archive/Universal Images Group via Getty Images.*

"Our tragedy is that we always have to explain ourselves." Thus complained Mordechai Ben-Tov of the left-wing Mapam party, quoting Chaim Weizmann, at a meeting of the People's Administration on May 13, 1948, the day before the prospective Jewish state was to declare its independence. The purpose of the meeting was to debate the declaration's latest draft.

In Hebrew, this sort of "explaining" is sometimes called *hasbarah*—justifying one's actions in an effort to win hearts and minds. David Ben-Gurion, presiding over the May 13 meeting, approached the declaration as at least in part an exercise in such *hasbarah*, and said so explicitly:

> This has to be a document that includes profound, encompassing, and fundamental Zionist *hasbarah*, both for the Jews—because there are still many Jewish doubters—and for the non-Jews who are not our haters. There's no place for juridical argumentation—the document has to set forth political assumptions.

Given the weight that would later be borne by the declaration—it would come to be referred to as Israel's domestic "identity card" and even as a source of law—these words might seem surprising. But Ben-Gurion couldn't have known that the declaration would serve so many unintended purposes. The next day, only hours before independence was officially proclaimed, he would again urge his Zionist partners not to get tied up in details—because this was *just* a declaration:

> There is no one among its drafters who thinks it's the height of perfection. But the purpose was to give just those things that in our opinion provide a basis for what we'll do today, for the people of Israel, world opinion, and the UN. We're declaring independence, nothing more. This isn't a constitution.

Indeed, in light of that purpose, much of the drafting revolved around what sorts of statements and justifications worked best for external audiences. One justification, discussed in last month's installment, was the identification of Eretz-Israel as the birthplace of the Jewish people. Ben-Gurion made sure that was included, albeit in a national rather than a religious form. This left three other rationales: first, the past sufferings of the Jews during their millennia of life in exile from the land; second, the modern achievements of the Yishuv, the Jewish community in Palestine; and third, the licenses issued by the international community over preceding decades in the form of the Balfour Declaration of 1917, the 1922 League of Nations' conferral of the mandate of Palestine on Great Britain, and above all the United Nations "partition resolution" of November 1947.

Each of these justifications had some use, and some merit. But the declaration had to be brief, and choices had to be made. Those choices said much about the sensibilities of the drafters; they also said a great deal about the politics of that specific moment in time.

A hierarchy of claims

Let's begin with the sufferings of the Jews, starting with their dispersal after the Roman destruction of Jerusalem and the Temple in 70 CE and climaxing most recently in the Holocaust.

In the earliest drafts, these sufferings loomed large. The first, drawn up by the lawyer Mordechai Beham, had been much influenced by the American Declaration of Independence, whose "list of [King George III's] abuses and usurpations" takes up more than two-thirds of that document. Beham's draft, for its part, catalogued "the destruction of our Holy Temple in Jerusalem" by the Roman legions, the banishment of the Jews into exile and "the loss of life and property at the hands of their many oppressors such as no people has been called upon to endure since time began," and finally the "cruel extermination of one third of our people" in the Holocaust.

Later drafters cut most of this, leaving only the mention, from pre-modern history, of the Jews' forcible exile from their land and, from modern history, of "the catastrophe which recently befell the Jewish people—the massacre of millions of Jews in Europe." And both of these disasters would be portrayed mainly as backdrops. Even though the Jews were exiled, the people "in every

successive generation . . . never ceased to pray and hope for their return . . . and for the restoration of their political freedom." As for the contemporary remnant of Jewry in Europe, the survivors of the Holocaust, they, too, "never ceased to assert their right to a life of dignity, freedom, and honest toil in their national homeland."

But would this rationale, however persuasive for Jews, also persuade the world? Even if in the past Jews had been exiled, persecuted, and most recently exterminated, did this necessarily point to the requirement of a Jewish *state*? It is often said that the Holocaust led to the creation of Israel, but Ben-Gurion warned that minds less favorably disposed might draw a wholly different conclusion: the people for whom a Jewish state had been designed were gone, so where was the need for such a state now, especially since creating it would mean provoking Arab rage? Therefore, Ben-Gurion said, important as it was to emphasize "historic rights," and to evoke the Holocaust, it was not enough.

Moreover, even as the drafters were shifting from one rationale to another, in Washington the Truman administration was backtracking. The State Department argued that dividing the land, as proposed by the UN, was unworkable, and that the League of Nations mandate, due to expire on May 14, should be replaced instead by a UN trusteeship. To dissuade Americans on this front, the Zionists would need more than a catalogue of historical rights and grievances; they would need a different rationale.

In the latest draft, the work of Moshe Shertok (later Israel's first foreign minister), that two-part rationale became clear: first, there was a Yishuv in place that was ready for statehood and primed to fight for it; second, a prime element in the UN's November 1947 partition resolution was the grant of an "irrevocable" license for a Jewish state.

The case for the self-sustaining capacity of the Yishuv was made strongly in a paragraph hailing the "pioneers, immigrants, and defenders" who

> made deserts bloom, revived the Hebrew language, built villages and towns, and created a thriving community controlling its own economy and culture, loving peace but knowing how to defend itself, bringing the blessings of progress to all the country's inhabitants, and aspiring toward independent nationhood.

This was a fairly straightforward claim, and it had the added virtue of echoing the findings of the UN commission (UNSCOP) that, in recommending partition in 1947, approvingly described the Yishuv as "a highly organized and closely-knit society which, partly on a basis of communal effort, has created a national life distinctive enough to merit the . . . title of 'a state within a state.'" Moreover, Shertok's draft claimed, during World War II the Yishuv had, "by the blood of its soldiers and its war effort, gained the right to be reckoned among the peoples who founded the United Nations." By rights, then, one might argue that, having fielded soldiers in a "war effort," the Yishuv should have *already* been recognized as a state—and as a founding member of the UN itself!

All in all, perhaps the most forceful single argument for the Jewish state was the fact that by 1947 the Yishuv, in the words of Abba Eban, had become "too large to be dominated by Arabs, too self-

reliant to be confined by tutelage, and too ferociously resistant to be thwarted in its main ambition."

As for the UN's "license," the argument on its behalf was based on the dramatic vote, still fresh in memory, that had taken place on November 29, 1947 at a meeting of the United Nations in its then-headquarters in Flushing Meadows, New York. Then and there the General Assembly, by a two-thirds majority, recommended a plan for "Independent Arab and Jewish States" and a "Special International Regime for the City of Jerusalem," to be implemented two months after the British evacuation but no later than October 1, 1948.

Zionist diplomacy had worked full-bore to secure this "partition resolution," as it came to be called, while the Arabs had tried to stop it. And when the resolution passed, the Yishuv hailed it as the greatest Zionist achievement since the Balfour Declaration of 1917. So it is still remembered; even today, Israel works hard to remind the world that in November 1947 the UN licensed the establishment of a Jewish state. But in April and May 1948, things looked different, and there was a debate among the leadership of the Yishuv over whether, and to what extent, the UN resolution could actually be relied upon.

Needless to say, Ben-Gurion and many others harbored deep reservations about key aspects of the UN plan. According to it, Jerusalem, home to 100,000 Jews, a sixth of the Yishuv, would be placed under some sort of international regime, while the dream of a state in all of Palestine would have to be shelved since half of the country was slated to become an Arab state. Although the mainstream Zionist leadership formally accepted the plan in its totality, the general attitude was well expressed by Ben-Gurion years later:

> We were resigned in 1947 to receiving the rump end of Palestine in accordance with the United Nations settlement [that is, the partition plan]. We didn't think that settlement very fair since we knew that our work here deserved a greater assignment of land. We didn't, however, press the point and prepared to abide scrupulously by the international ruling come the day of our independence.

Indeed, since the passing of the UN resolution, much had happened to weaken the Yishuv's commitment to it. The Arabs, following their own *rejection* of the plan, had launched a civil war against the Jews, in the course of which the Jews soon got the upper hand—to the extent of taking areas allotted to the Arab state that had become bases for Arab attacks on the Yishuv. Most notably, this included Jaffa, just minutes from the Tel Aviv meeting place of the People's Administration.

Matters were thus in flux, and some thought it might even be possible to step back from *total* acceptance of the UN plan. True, in any declaration of independence it would have to be mentioned—since, of all the justifications for declaring the Jewish state, the UN vote was accepted by, and carried the greatest weight in, the outside world. But could it be invoked in such a way as to legitimize the Jewish state but not bind the state to all of the plan's provisions? In particular, there was the issue of the map that accompanied the plan: would it be possible to get out of the straitjacket it placed on Israel's freedom of maneuver?

On these points, much can be learned by examining successive drafts of the declaration. From the beginning, so strong was the attachment to the UN resolution that early drafts not only regularly invoked it but referred to it explicitly as a "partition" plan and pledged explicitly to uphold its accompanying map. But by May 12, two days before the declaration, the People's Administration reopened discussion. Did the Jewish state need to be declared, for instance, *in the framework* of the plan? Although that was the formula most likely to win international recognition, it also posed a dilemma by implying acceptance of the map. On the other hand, a declaration that the state was established simply *on the basis* of the plan could raise objections by implying a diminished commitment to the map. In brief, should the Jews seek to reassure the international community that they weren't bent on expansion, or prepare the case for possible additions of territory?

In April, the jurist Felix Rosenblueth, a member of the People's Administration who would later become Israel's first minister of justice, had assumed responsibility for overseeing the draft declaration. In the May 12 session, he now insisted that the state be declared "in the framework" of the UN partition plan—and that its borders be defined accordingly. As a matter of law, he contended, "it is impossible not to treat borders." Anticipating discussion, he had distributed in advance a proposed draft declaring "a free, sovereign Jewish state in the borders set forth in the resolution of the UN General Assembly of November 29, 1947."

Bechor-Shalom Sheetrit, a lawyer and judge (and future minister of police), supported Rosenblueth with a legal argument of his own:

> Regarding borders, I agree with Rosenblueth. It's not credible to declare an authority without defining its scope. This can draw us into complications. . . . What the state publishes is the law in the territory of the state. . . . When a state arises, it declares the limits of its borders.

In previous installments I've noted that Ben-Gurion hadn't devoted a great deal of time to the People's Administration discussions. But he had to stay engaged, precisely because he couldn't rely on others to appreciate the full political implications of their formulas. For better or worse, the drafting had been turned over to lawyers, and the result was exactly the kind of overly-lawyered thinking that he was on guard to check. As he saw it, Rosenblueth's team was about to confine the state to the same geographical straitjacket from which it had already managed to wriggle free, and to throw away the hard-earned gains of weeks of battle, not to mention the prospect of gaining a foothold in Jerusalem.

In a rebuttal described by one witness as "trenchant," Ben-Gurion now took strong exception to the arguments of Rosenblueth and Sheetrit. "If we decide not to say 'borders,'" he asserted plainly, "then we won't say it." Nor was there any legal requirement to specify them. To illustrate, he drew a compelling comparison:

> This is a declaration of independence. For example, there is the American Declaration of Independence. It includes no mention of territorial definitions. There is no need and no law such as that. I, too, learned from law books that a state is made up of territory and population. Every state has borders. [But] we are talking about a

> declaration [of independence], and whether borders must or mustn't be mentioned [in one]. I say, there is no such law. In a declaration establishing a state, there is no need to specify the territory of the state.

Ben-Gurion went farther. The UN, having done nothing to implement its plan, and the Arabs, having declared war on Israel, had effectively torn up the UN map; in these circumstances, expansion beyond the partition borders would be entirely legitimate:

> Why [should we] not mention [borders]? Because we don't know [what will happen]. If the UN stands its ground, we won't fight the UN. But if the UN doesn't act, and [the Arabs] wage war against us and we thwart them, and we then take the western Galilee and both sides of the corridor to Jerusalem, all this will become part of the state if we have sufficient force. Why commit ourselves?

Ben-Gurion then did something unusual for him: he called for a vote. "Who favors including the issue of the borders in the declaration?" Four raised their hands. "And who is opposed?" Five. "*Resolved*," read the minutes, "not to include the issue of the borders in the declaration."

It was the narrowest of margins, and one vote could have tilted it the other way. What prompted Ben-Gurion to call for a vote is a matter of conjecture, but clearly he regarded the issue as of cardinal importance and probably also thought he had to break the momentum built by Rosenblueth, a formidable legal authority.

Nor had Rosenblueth's been a lone voice. The Jewish Agency had reassured foreign governments that the new state wouldn't deviate from the partition map, and its officials, as the U.S. consul in Jerusalem reported the following day, "have steadfastly maintained their intention to remain within the UN boundaries." If this "intention" were to make its way into Israel's foundational document, it would be impossible to amend later.

Where exactly might the Jewish state seek to adjust the borders stipulated by the partition plan? Ben-Gurion mentioned inclusion of the western Galilee and the Jerusalem corridor, but these were only two examples. In recalling his rationale in later years, he would emphasize its more general character:

> I said: let's assume that during a war we capture Jaffa, Ramlah, Lydda, the Jerusalem corridor, and the western Galilee, and that we want to hold onto them. Well, it just so happens that we did take these places!

In brief, Ben-Gurion wanted the vote as a license to incorporate any strategically vital territory seized in a war with an Arab aggressor.

In the early afternoon of May 14, with little time left before the release of the declaration, Ben-Gurion presented the final draft for approval by the People's Council, a larger body than the People's Administration. Mention of borders had disappeared from the draft, but since the decision to omit them had been carried by a narrow vote, there was some chance that the issue might now become a last-minute bone of contention. To forestall the possibility, Ben-Gurion placed an unexpected spin on the May 12 decision:

> There was a proposal [in the People's Administration] to determine borders. And there was opposition to this proposal. We decided to *sidestep* this question (I use this word deliberately), for a simple reason: if the UN upholds its resolutions and commitments and keeps the peace and prevents bombing and implements its resolution forcefully—we, for our part (and I speak on behalf of the entire people), will respect all of its resolutions. Until now, the UN hasn't done so, and the matter has fallen to us. Therefore, not everything obligates us, and we left this issue open. We didn't say "No to the UN borders," but we also didn't say the opposite. We left the question open to developments.

This was a masterstroke of wording. In fact, the question of whether to commit the new state to the partition borders hadn't been sidestepped at all; it had been decided by a vote, albeit a vote that replaced certainty with ambiguity. Until May 12, the state-in-waiting had been committed to the partition map. After May 12, that commitment depended on the UN's doing something it should have done but hadn't done and likely wouldn't do. Ben-Gurion had created a new consensus—"of the entire people"—suggesting that the partition map might be revised. And so, when he read out the declaration later that day, the borders had gone missing.

There's an American aspect to this part of the story. The world had been led to expect that Israel would fill *only* the space on the map allotted to it by the partition plan. Washington was no exception; as Jewish statehood drew near, the U.S. government sought reassurances.

Thus, on May 13, Eliahu Epstein (later Eilat), the Jewish Agency's "ambassador" to Washington, received a phone call from Clark Clifford, special counsel to President Truman and a keen supporter of Zionism. Clifford was working to persuade Truman to recognize the Jewish state immediately upon its birth. He instructed Epstein to write the president formally with this request.

Clifford would later recall emphasizing to Epstein the particular importance of the new state's claiming "nothing beyond the boundaries outlined in the UN resolution of November 29, 1947, because those boundaries were the only ones which had been agreed to by everyone, including the Arabs, in any international forum." This was an odd claim, since the Arabs hadn't accepted a Jewish state in *any* borders; but the demand being placed on Israel was clear enough, and in his letter to the president Epstein duly wrote that Israel was being declared "within frontiers approved by the [UN] General Assembly." Washington's de-facto recognition of the state followed almost immediately.

In reality, as we've seen, the state of Israel hadn't been declared in *any* borders. This would later give critics a basis on which to claim that the United States had been misled into recognizing the state based on a false representation. But in writing his letter Epstein wasn't aware that Ben-Gurion had shifted Israel's position. On May 14, Tel Aviv was totally absorbed in the political and practical preparations for the declaration, and Epstein had no contact with Shertok, who was his superior. He would apologize to Shertok that same day, but only for writing to Truman on his own initiative.

So Israel received Washington's recognition as a state without borders, although Washington may well have assumed otherwise. Within a week, however, the declaration's lack of a reference to borders had been noticed and was causing trouble at the UN—and Abba Eban, then representing the new state's interests at the world body, anxiously urged that the omission be rectified. On May 24, he sent a message to Shertok from New York:

> Ambiguity in [independence] proclamation regarding frontiers much commented [upon by] delegations and exploited [by] opponents, possibly delaying recognition and restricting those received. We urge official statement defining frontiers [of] Israel in accordance with November [1947 UN] resolution.

This, from the man who would become Israel's most famous champion in the world. Needless to say, Eban's plea fell on deaf ears—fortunately so, as most Israelis today would agree. By the end of the 1948-1949 war, Israel's territory had grown from the share allotted to it under the partition plan—55 percent of mandatory Palestine—to 78 percent: that is, by nearly 50 percent. The additional territory included west Jerusalem, a corridor leading to Jerusalem, the southern approaches to Tel Aviv including Jaffa, Lydda, and Ramlah, the whole of the Galilee, and parts of the Negev.

The "partition" dilemma

It might be thought that while the declaration didn't commit Israel to borders, it did commit Israel to the principle of partition itself. Recall that according to the UN plan there were to be two states, one Jewish and one Arab, and an economic union between them.

The pertinent article in the declaration reads as follows:

> THE STATE OF ISRAEL is prepared to cooperate with the agencies and representatives of the United Nations in implementing the resolution of the General Assembly of the 29th November, 1947, and will take steps to bring about the economic union of the whole of Eretz-Israel.

This article, too, had undergone revision. As late as Shertok's May 13 draft, the UN plan was being described by its official name: "Plan of Partition of Palestine with Economic Union." In the session that day, Ben-Gurion insisted on deleting the reference to partition. "Why should we mention partition?" he asked pointedly, and so that word, too, disappeared. The declaration does emphasize that the UN had "passed a resolution calling for the establishment of a Jewish state in Eretz-Israel," and even insists that this decision was "irrevocable." But from this alone one might conclude that the General Assembly had voted in favor of only one state, a Jewish one, which by itself would pursue the economic union of the whole country.

Why was Ben-Gurion adamant about omitting the words "partition plan"—a plan he had supported back in 1937 when it was recommended by a British Royal Commission and again ten

years later in the November 1947 UN resolution? The reason was simple: to make the declaration acceptable to the Revisionist right, whose representatives might resist signing a document with the word "partition" in it. And they were indeed sensitive to that word and its connotations. In the People's Council meeting on the morning of the declaration, the Revisionist representative Herzl Rosenblum, also known as Vardi, spoke up to register his ongoing worry. Despite the fact that everything possible had been done to avoid mentioning partition, the declaration, he said, still promised to "take steps to bring about the economic union of the whole of Eretz-Israel." Could not this be construed as acceptance of partition? After all, what was to be unified, if not two separate entities? To mention "economic union" was thus to imply acceptance of "the principle of partition."

Shertok gave a peculiar answer:

> It's one or the other: either we rest on the UN decision, or we don't. If we do rest on it, we have to rest on all of its principal parts. In the [1947] resolution, there is an explicit condition: for the Jewish state (and the Arab state) to earn UN recognition, it must be clear that it is prepared to enter into an economic union.

In fact, however, Ben-Gurion's position was precisely the opposite of "either one or the other." To him, rather, Israel could play up UN recognition of the Jewish right to a state while pretty much ignoring the map and finessing the union. The latter was especially easy to do since in any case no Arab state had been established. And indeed, as we see today, the economic integration of the whole country doesn't require that there be two states.

The UN's limited role

In the May 13 meeting of the People's Administration, some of the members complained that Shertok's draft was too full of justifications. Mordechai Ben-Tov of Mapam, who (as we saw early on) complained about the Jewish impulse to "explain ourselves," thought that "so much detail . . . weakens a declaration" and that "it would be better if it were shorter." In particular, he didn't like all of the references to international decisions:

> It makes no sense in this historic moment to base everything on this or that provision of the [League of Nations] mandate or the UN resolution. Our historic right drowns in a multitude of passages, and I don't find an expression of the natural right of a people to a free life in our homeland.

Rabbi Judah Leib Fishman, quoting the Talmud, agreed: "Only that which is unclear requires many proofs."

Ben-Gurion also agreed that Shertok's draft was too long, and that night he cut it. But his changes were mostly stylistic; he was careful to leave in place the core justifications, including the

references to the UN plan. In fact, the world body appears in no fewer than six separate paragraphs of the declaration.

Later, Ben-Gurion would claim that the UN had done nothing to establish the state, that it came into existence by force of arms alone, and that the UN resolution was a dead letter—"void," as he put it in 1949 when he moved Israel's capital to Jerusalem. But that was after the war. On May 14, 1948, Israel's founders wanted to emphasize to the world that while the Jewish people had been born in Eretz-Israel, its state was the adopted child of the United Nations. Israel had a "natural and historic" right to exist, *and* that right had been recognized by the world.

Nothing made this point more clearly than the crucial passage of the declaration:

> By virtue of our natural and historic right *and on the strength of the resolution of the United Nations General Assembly*, we hereby declare the establishment of a Jewish state in Eretz-Israel, to be known as the State of Israel.

Does this suggest that the United Nations "created" the state of Israel? Hardly; if it were within the power of the UN to create states, an Arab state would have arisen in 1948 alongside Israel. After all, the Arabs of Palestine possessed exactly the same recognition of their rights and the same license to act as did the Jews. The difference, to revert to the term invoked by the UN Special Committee on Palestine, was that the Arabs didn't constitute a "state within a state."

I have made much use in this series of the protocols of the People's Administration and the People's Council. Both were established by the Zionist Executive in order to bring together all factions in a nascent government and parliament. The Jews had made common cause, and with it created the institutions needed to translate their rights and recognition into statehood. The Arabs of Palestine had nothing comparable. Indeed, their elites were already in full flight from the country.

The most impressive part of the Israeli declaration is perhaps the simplest: "We, members of the People's Council . . . " Through these representatives, who affixed their signatures in tidy alphabetical order on the proclamation that created the state, the new Israeli people spoke as one.

ADVANCING JEWISH THOUGHT Mosaic

WHOSE RIGHTS DID ISRAEL RECOGNIZE IN 1948?

In all but one of the instances in which "rights" appear in the Israeli declaration, they refer to a collective right, not an individual one.

September 23, 2021 | Martin Kramer

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This is the sixth installment in the historian Martin Kramer's series on how Israel's declaration of independence came about, and what the text reveals about the country it brought into being. Previous installments can be seen here.—The Editors

Tel Aviv residents celebrating on November 29, 1947 the UN decision to create a Jewish state. *AFP via Getty Images*.

Individual rights, one of the great legacies of the Enlightenment, lie at the very center of the American Declaration of Independence. The most famous passage is this one: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." The list would later be elaborated more fully in the Bill of Rights, and similar expressions can also be traced through the French Declaration of the Rights of Man to the UN's Universal Declaration of Human Rights.

Israel's declaration of independence also speaks of rights. But while much in the declaration draws on the American model, there is a clear departure. As the jurist Elyakim Rubinstein has pointed out, in all but one of the numerous instances in which the words "right" and "rights" appear in the Israeli declaration, they refer to a *collective* right, not an individual one.

The mentions of collective rights include:

- "the right of the Jewish people to national rebirth in its own country."

- “the right of the Jewish people to rebuild its national home.”
- “the right [of Holocaust survivors] to a life of dignity, freedom, and honest toil in their national homeland.”
- “the right [of the Yishuv, the local Jewish community in pre-state Palestine] to be reckoned among the peoples who founded the United Nations.”
- “recognition by the United Nations of the right of the Jewish people to establish their state.”
- “the natural right of the Jewish people to be masters of their own fate, like all other nations, in their own sovereign state.”
- the establishment of the state “by virtue of our natural and historic right.”

In this respect, the declaration reveals its explicitly Zionist rationale and its blunt rejection of the logic behind the 18th- and 19th-century emancipation acts, themselves products of the Enlightenment, that granted the rights of citizenship to Jews in various European countries. In 1789, the Comte de Clermont-Tonnerre famously insisted to the National Assembly in Paris that the Jews be protected by Article 10 in France’s Declaration of Rights, according to which “no man ought to be molested because of his opinions, even his religious opinions.” But the count also insisted that while the Jews should be “granted everything as individuals,” they should continue to be “denied everything as a nation.”

A century and a half later, Europe failed to protect those individual rights of Jews—not only their right to practice their own religion but their right to life itself. By contrast, the Zionist view, as articulated by Theodor Herzl, was that the individual rights of Jews could be upheld only if the Jews collectively enjoyed rights as a nation, in their own country, in their own homeland, and in their own state. This is the bedrock of Zionism.

The principle of equality

Still, alongside the declaration’s emphasis on Jewish collective rights, Israel’s founders also aspired to create a state that would respect the rights of others: in this case, the Arabs. Herzl, Chaim Weizmann, Ze’ev Jabotinsky, David Ben-Gurion: all championed the liberal ideal that Zionism did not negate those rights, individual and collective alike. Herzl put it this way in his 1896 manifesto *The Jewish State*: “if members of other faiths or of other nations reside among us, we will provide them with equal protection and rights under law.”

But as the conflict with the Arabs in Mandate Palestine intensified, so, too, did an apprehensive concern that the Arabs’ realization of *their* national rights could prevent the rise of a Jewish state. Today we are accustomed to seeing the Jews of Israel as a majority and the Arabs as a minority, but the founders inhabited a very different world in which the Jews were a decided minority in their own “national home.” It took much more courage for them to stand up for equality than it

takes today, when Jews are a solid majority in their state, and have been one for more than 70 years.

But stand up they did. Consider one example. In an earlier installment I mentioned the April 12, 1948 proto-declaration prepared by Zalman Rubashov (later Shazar, third president of Israel) on behalf of the Zionist Executive Council. The parts devoted to rights in that document would filter through into drafts of the actual declaration. This is what Rubashov had to say about rights and the Arabs:

> The Jewish state that the people of Israel will establish in its homeland will be a state of justice and freedom, of equality of all its citizens, without distinction of religion, race, sex, and country of origin. . . . And to the Arabs of the Hebrew state and our neighbors surrounding us, our appeal is directed today—in fact, in days of the bloody battle imposed on us—for brotherhood, peace, and cooperation. We came in peace and for building peace we came here. Let us together build our state as equal citizens with equal rights and obligations, in belief in mutual respect and understanding of the needs of the other.

Even as Rubashov spoke these words, the "bloody battle" was in full swing. Before it ended in 1949, 6,000 Jews, fully 1 percent of the Yishuv's population, would die. The American Declaration of Independence refers to "the merciless Indian Savages whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions." It would have been easy to say something comparable about the Arabs.

After all, the declaration was made in the midst of a war in which the prospective Arab citizens had mobilized to undo the state's coming into being, and had coordinated their armed rebellion with the invading and better-armed Arab states. In this kind of war, rights were bound to be compromised. Indeed, to prevail against its enemies, the Jewish state also had to impose emergency measures on its *Jewish* citizens, including by pushing all of the pre-state militias into a centralized army.

Yet in Rubashov's text there is no demonization of the enemy, and his conciliatory tone is what prevailed in the actual declaration and probably directly inspired it. Still, even as subsequent drafters aspired to make the declaration a catalogue of liberal principles, at times they did hedge their language, knowing full well that the war would open a gap between professed principles and state policy. And the war would also produce a deliberate omission.

Democracy, dropped

If you ask the average Israeli today, or even the average Zionist, how Israel's declaration of independence defines the state, he or she will probable answer thus: according to the declaration, Israel was established as a Jewish and democratic state. Here, for example, is Abe Foxman, former head of the Anti-Defamation League, in a letter to the *New York Times* from 2015:

> Defining exactly what a Jewish state means is an age-old issue in Israel. But Israelis have understood since the creation of Israel in 1948, as embodied in the declaration of independence, that Israel is a Jewish and democratic state.

In fact, however, the declaration of independence does not contain the word "democracy" or the word "democratic." And this wasn't just a careless oversight on the part of the drafters, who in several earlier versions had explicitly described the state as "democratic." It was Zvi Berenson, the most liberal of the drafters, who first introduced the term; the Jewish state, he wrote, would be "Jewish, free, independent, and democratic." In later drafts, "democratic" would be moved to another place. But then finally, in Moshe Shertok's penultimate draft, "democratic" disappeared.

Why? We don't know for certain. Yoram Shachar, Israel's foremost expert on the drafting, speculates that Shertok removed the term because it had already been decided that, in the Jewish state, matters of personal status would be governed by Jewish law, and this might be considered undemocratic. But that seems a very unlikely reason to strike "democracy," a term that refers explicitly to *political* rights in the public sphere.

In the public sphere, however, is exactly where the new state would indeed have had a problem.

According to the UN resolution of November 1947, the Jewish state was to hold elections for a "Constituent Assembly" two months after the May 14, 1948 departure of the British, in a vote "which shall be conducted on democratic lines." The assembly would then proceed to "draft a democratic constitution" and to establish "a legislative body elected by universal suffrage and by secret ballot on the basis of proportional representation."

The problem was this: in April and early May 1948, no one could be sure what the ethnic composition of the Jewish state would be. According to the UN partition plan, the Jews, in the territory allotted to them, were to enjoy only the narrowest of majorities, 55 percent (for an estimated 498,000 Jews and 407,000 Arabs). Of course, after independence, the state would go on to admit some hundreds of thousands of Jewish refugees. But that would take some years to be fully realized.

By May 14 several hundred thousand Arabs had fled from areas under Jewish control, diminishing their percentage in those areas. But what if the Israeli army were to capture more territory than the UN had allotted to the Jewish state, including territory allotted to the Arab state? Who could tell how many Arabs would remain there, or whether the state of Israel might choose, or be compelled, to admit Arabs who had fled from the Jewish side and now wished to return?

In short, there could be no certainty that the Jewish state would end up with a solid Jewish majority; perhaps it would, perhaps not. Also, for how long could elections be put off in a democracy? All in all, it was better to hedge, lest a commitment to "democracy" undermine the entire purpose for which Zionism had been established: namely, self-determination for the Jews in their own state.

And yet a paradox remains. In the so-called "Appeals" section of the declaration, we read this:

> We appeal—in the very midst of the onslaught launched against us now for months—to the Arab inhabitants of the State of Israel to preserve peace and participate in the upbuilding of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions.

Ben-Gurion himself, at the last minute, turned "full citizenship" into "full and equal citizenship." So even as "democracy" went out, "equality" went in, practically tying the score. What was Ben-Gurion thinking? Did he already know, from the outcome of the war to this point, that the state would have its decisive Jewish majority, so that there would be no risk in having Arabs represented in it "fully" and "equally"? Was this, then, just another instance of Ben-Gurion's uncanny ability to see farther than anyone else, all the way to the kind of Israel that would emerge from the war?

In this case, we only have the edit, not its rationale, so we can't say for certain. But we can surmise. Ben-Gurion did indeed hold a vision of Arabs and Jews living side by side in perfect equality, with one proviso: the Jews would form a majority, the Arabs a minority. With that one condition met, the Arabs would be entitled to the full panoply of individual rights enjoyed by Jews, in addition to collective rights as a national minority. By mid-May 1948, that is the reality he saw looming.

It has been said that Israel isn't so much a Jewish and democratic state as a Jewish state that happens to be democratic. If so, then it happens to be democratic because, by the beginning of 1949, when Israel held its first elections, it was clear that Jews would constitute 85 percent of the electorate. Hundreds of thousands of prospective Arab citizens of the state had fled as refugees and would not be coming back. By then, however, it was too late to put "democratic" back into the declaration of independence.

Tellingly, the guidelines of Israel's first elected government included a section, titled "Freedom, Equality, and Democracy," which described the state's system of government as "democratic" and "republican." In addition to repeating and expanding rights mentioned in the declaration, the guidelines specified that "in all state institutions, municipalities, and other elected bodies, full and equal electoral rights will be maintained, without regard to sex, religion, race, or nationality." By now, clearly, it was possible to stipulate not just full and equal rights but full and equal *electoral* rights—again because the Jews finally had their decisive majority.

Hence the paradox: Israel owes its development along solidly democratic lines, as a state in which Jews and Arabs do enjoy full and equal political rights, to the dislocations of the war in 1948. Wars don't usually foster democracy in post-colonial states. Israel may be the world's only exception.

The Israeli declaration even went beyond recognizing only the political rights of Arabs. After Ben-Gurion finalized his draft and presented it for discussion to the People's Council, one word was added to his draft statement that the state would "guarantee freedom of religion, conscience, education, and culture." The word was "language," proposed by one member on the grounds that its omission

> could be interpreted to mean that Arabic will not be of equal status to Hebrew, and we have assumed as a basis that in our state both languages will have equal status. Not just in schools, but in courts, they can speak Arabic.

To this Ben-Gurion made an interesting response: "No one opposes freedom of language. . . . But the language of the state is Hebrew. This doesn't deny to other inhabitants the right to use their language in every place." But Shertok, too, thought that freedom of language should go in, and so it did, as the sole change made in the declaration during the two hours before Ben-Gurion announced it.

A nod to the UN?

The listing of rights in Israel's declaration of independence may strike some readers as not only familiar but as somehow a little *too* familiar. Israel, says the declaration, "will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race, or sex." Familiar, indeed: this is an apparent crib of the UN Charter, which binds member states to show "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

Elsewhere, the same suspicion may be aroused by the lists of various "guarantees." Israel, one reads, "will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice, and peace as envisaged by the prophets of Israel," and "it will guarantee freedom of religion, conscience, language, education, and culture." This almost sounds plagiarized from the 1947 UN partition plan for Palestine, which required that the Jewish and Arab states

> guarantee to all persons equal and non-discriminatory rights in civil, political, economic, and religious matters and the enjoyment of human rights and fundamental freedoms, including freedom of religion, language, speech and publication, education, assembly, and association.

This striking correlation between the way rights and guarantees are checked off in the Israeli declaration and the way they are prescribed in relevant UN documents has provoked the conjecture that they were included precisely in order to ingratiate Israel with the world body and grease the path to its acceptance and recognition there. Assaf Inbari, an Israeli author and public intellectual, makes the strongest case for such a conclusion:

> The most-quoted, most-extolled paragraph in the Declaration of Independence (the thirteenth paragraph), which has won near-constitutional status in Israeli discourse, is nothing more than a submissive, almost-word-for-word repetition of the UN demand for the protection of equal rights and basic freedoms. . . . The only significant difference between the [two] . . . is the poetic addition of the phrase "as envisaged by the prophets of Israel," [which] has succeeded in deluding generations of Israelis into

> thinking that the paragraph . . . expresses the original, distinctive vision of the state of Israel as a Jewish and democratic state even though the vision outlined in this paragraph is . . . the exact same vision outlined in the UN decision.

Inbari concludes that this "obvious layer" in the declaration is "merely a diplomatic tactic intended for Western, liberal ears, and designed to win the hearts of the nations." That is certainly possible; in our previous installment, I quoted Ben-Gurion as emphasizing that one of the purposes of the declaration was to satisfy the UN—as he put it, it was a form of public diplomacy, or *hasbarah*. For while it is true that the Jewish state already had a license from the UN to exist, it would still need to apply for formal admission to the body and only thereafter could it be regarded as a full-fledged member of the family of nations.

It is also true that, in practice, by no means did all of the UN's existing members themselves display a scrupulous regard for individual or minority rights. As I showed in another essay in *Mosaic*, the most steadfast supporter of Israel at the UN at the time was Stalin's Soviet Union. But experience had taught Zionist leaders that they would be held to a higher standard, both by Western democracies and by world Jewry.

And here Ben-Gurion made another critical change to Shertok's draft. To the latter's assertion that the state of Israel "will grant complete equality of social and political rights to all its inhabitants irrespective of religion or race," Ben-Gurion said no, the state will not "grant" those rights to its inhabitants, it will "ensure" them. The reason: "They are entitled to them."

This is a radical difference, introducing the concept of unalienable rights that exist independently of whether the state "grants" them or not. Just when one might think that the founders didn't much care about individual rights (let alone unalienable ones à la the American Declaration), and only mentioned them to mollify the UN, along came Ben-Gurion to make one think again.

I'll return to this theme momentarily, but for now I add only that while Shertok's draft specified equal rights irrespective of religion and race, it differed from the UN Charter in omitting the phrase "irrespective of sex." Ben-Gurion added that, too.

Restoring the holy places

If the declaration's discussion of rights can often sound like an echo of a UN document, not so the treatment of another topic: the rights to the Holy Places. In its promise that the state will "safeguard the Holy Places of all religions," the declaration dissented from the demand of the UN's 1947 resolution, which spoke not just of safeguards but also of "existing rights." The UN plan read as follows:

> Insofar as Holy Places are concerned, the liberty of access, visit, and transit shall be guaranteed, in conformity with existing rights. . . . Freedom of worship shall be

> guaranteed in conformity with existing rights, subject to the maintenance of public order and decorum.

It's not hard to imagine why the founders didn't want to commit themselves to the maintenance of "existing rights." The reason was that the Jews had very few of them. Indeed, it was in the name of other people's "existing rights"—also known as the status quo—that Jews had been subjected to severe restrictions even at the Western Wall.

This wasn't an operative issue in 1948, when the "Old City" of Jerusalem lay outside the prospective Jewish state and so did Hebron, the site of the Cave of the Patriarchs and (after Jerusalem) the second holiest city in Judaism. But as we have seen, the declaration makes no mention either of the Jewish holiness of the land or of any particular site. In fact, it makes no mention of Jerusalem. Doing so would have provoked the international community, which, precisely because of the presence in Jerusalem of the Holy Places, had reserved the city for its own administration.

But what we do see in the Israeli declaration is the seed of later Israeli policy in Jerusalem after its capture of the Old City in the Six-Day War of June 1967. From that point onward Israel would safeguard the holy places in accord with "existing rights" (absent a clear Jewish interest to the contrary) but would also improve conditions of specifically Jewish access to specifically Jewish holy places in the Jewish state. The results are obvious both at the Western Wall and at Hebron's Cave of the Patriarchs, where Jewish access has been restored and expanded.

The wording of the declaration also made possible a future basic law titled "Jerusalem, Capital of Israel." Alongside "safeguarding" the holy places, it establishes the principle of "freedom of access to the members of the different religions to the places sacred to them or their feelings." Sites from which Jews had been excluded for centuries now became accessible to them, including the Temple Mount.

The Jewish right of return

We may conclude this installment by highlighting a right that, according to the founders, was and is possessed by every Jew everywhere. The declaration, in its section on principles, announces that "the State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles." It also affirms what the Holocaust had once again demonstrated—namely, the need for a state that "would open the gates of the homeland wide to every Jew."

Ultimately, this is the one wholly unique right affirmed by the declaration of independence, and in 1950 legislated in the Law of Return. All of the other rights enumerated in Israel's declaration can be found in the constitutions and laws of other democracies. But the right of the Jews to "return" has no parallel. True, some other states have repatriation laws, but no other repatriation law reaches as far back as two millennia in confirming this right.

Thus, the first act of the new state was to abolish the British legislation of 1939 that had closed the gates of the country to Jews desperate for refuge. The first shipload of immigrants who had been denied entry by the British disembarked on the evening of the declaration. Since then, millions more Jews, including myself, have exercised their right of return.

As is well known, the law has also given rise to all sorts of controversies. The two most prominent: (1) who exactly is a Jew? and (2) isn't this a form of discrimination that privileges Jews over others?

The first issue is indeed complex. The declaration issues no guidance, and neither does the language of the law specify who is a Jew for its purposes. When the gates opened on May 14, 1948, they were opened to all who had been persecuted as Jews. Who else would come to a state about to be invaded by enemies bent on its destruction? Over time, however, the who-is-a-Jew issue became embroiled in the struggle between secular and religious authority in Israel—a later development that deserves separate analysis.

The second issue, by contrast, is a matter of broad Israeli Jewish consensus: Jews, whatever the definition, possess a fundamental and inalienable right to live in their homeland. This is the meaning of the Jewish state. Note the priorities in the declaration's key announcement: "We hereby declare the establishment of a Jewish state in Eretz-Israel, to be known as the State of Israel." The founders did not first establish a state called Israel and then define it as Jewish. They established a Jewish state, which they proceeded to call Israel.

The Jewish character of the state is therefore fundamental and prior to any other characteristic. And it is the Jewish character of the state that, by assuring its Jewish majority, makes possible its democracy. Not only is there no contradiction between the Jewish and democratic character of the state. The latter depends on the former.

Moreover, while it is true that the declaration places emphasis on the *collective* right of the Jewish people to a state, the same right can be construed also as an individual right. At one point in the meeting of the People's Administration only hours before the declaration was proclaimed, Shertok responded to a question with this statement: "Not only the right of the Jewish people must be mentioned. The right of the Jewish individual, as an individual, to his personal honor demands that he have a state." There is an allusion to this in the passage of the declaration stipulating that survivors of the Holocaust have the "right to a life of dignity."

Although we tend to think of honor and dignity as things that accrue to us by virtue of our achievements, the authors of the declaration lived in a world where Jews had been stripped of both honor and dignity simply by being made stateless—that is, people of nowhere. But neither did Zionism invent the "right to personal honor" or the "right to a life of dignity." These are no different from the "unalienable rights" of "life, liberty, and the pursuit of happiness" in the American Declaration of Independence. The argument of Zionism was that Jews could not secure these individual rights without a state of their own. What Zionism did not claim, but what is arguably true, is that the existence of the Jewish state has also imparted honor and dignity to Jews elsewhere and everywhere.

ADVANCING JEWISH THOUGHT Mosaic

HOW ISRAEL'S DECLARATION OF INDEPENDENCE BECAME ITS CONSTITUTION

Israel's founders made little of the declaration at the time. It took decades of work by figures of widely different political stripes to make it the towering document it is today.

November 1, 2021 | Martin Kramer

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This is the final installment in Martin Kramer's series on how Israel's declaration of independence came about, and what the text reveals about the country it brought into being. Six previous installments can be seen here.—The Editors

Flag-bearing jeeps at the head of a parade marking the 25th anniversary of the Israeli declaration of independence in Jerusalem on May 8, 1973. *Keystone/Hulton Archive/Getty Images*.

Israel's declaration of independence was publicly read out by David Ben-Gurion late in the afternoon of May 14, 1948, a Friday. Its last, operative section promised that independence would be followed by a "constitution which shall be adopted by the Elected Constituent Assembly not later than the 1st October 1948."

In the hours before the ceremony, various members of the People's Council—the temporary legislative body in whose name the state's establishment was proclaimed—objected to certain formulas in the document. Ben-Gurion (as I noted in an earlier installment of this series) downplayed the document's significance and reassured the objectors in these words: "We're declaring independence, nothing more. This isn't a constitution. As for the constitution, we will have a session on Sunday, when we will deal with it."

But they didn't deal with it on that Sunday, it wasn't adopted on or before October 1, 1948, and it hasn't been adopted to this day. Israel has no constitution.

In retrospect, Elyakim Rubinstein, a former Supreme Court justice, wondered whether Ben-Gurion hadn't erred in failing to push through a constitution simultaneously with the declaration of independence: "Looking back," he wrote,

> a wistful murmur suddenly sneaks into the heart. Perhaps a moment of truth was lost on that [pre-Sabbath afternoon] at a rare moment of relative unity in the face of external dangers, when a constitution could have been hammered out.

But then again, Rubinstein added, perhaps "a debate over a constitution then would have derailed passage of the declaration."

Perhaps so, perhaps not. In any case, Rubinstein's speculations assume that, at the time, Ben-Gurion actually had an interest in a constitution. He did not. He was running a war and preparing to build a nation, and he wanted nothing to distract him from those tasks. So he dismissed a constitution, whose details would require debate, as an intolerable distraction.

A year later, in mid-1949, he was still dismissing it:

> Debate about a constitution will take years, keeping all of Israel and the Diaspora busy. If a word appears about freedom of conscience, an argument will erupt about this freedom of conscience as opposed to freedom of religion or as part of freedom of religion. In the entire Jewish world, instead of concern for what needs to be done, Jews would argue about the constitution. . . . This is liable to hurt us a great deal.

Ben-Gurion may have had in mind some of the fractious debates that preceded the declaration of independence, especially the heated back-and-forth over including mention of "the Rock of Israel" as a veiled allusion to the Almighty. Did Israel need more of that sort of thing? Ben-Gurion obviously thought not.

More generally, he also seemed to believe that law in Israel would simply be what the legislature determined it to be at any given moment, and that there was thus no real need for constitutional law. This comes through in a pre-state exchange with Felix Rosenblueth in the People's Administration—the provisional executive branch—over the issue of borders. Rosenblueth (soon to be Pinḥas Rosen, a future justice) was arguing that, according to international law, a state had to define its borders:

> Rosenblueth: This is an issue of international borders; it is impossible to ignore.
>
> Ben-Gurion: Everything is possible. If we decide now not to say "borders," then we won't say it. Nothing is a priori.
>
> Rosenblueth: This is not a case of a priori. This is a legal matter.
>
> Ben-Gurion: Law is a matter that human beings decide.

“Everything is possible.” “Law is a matter that human beings decide.” “Nothing is a priori.” Obviously, Ben-Gurion was not a leader about to invest in constitution-writing.

I. The Rise of Basic Laws

And so no constitution was written. The Knesset, Israel’s parliament, which was initially supposed to function as the Constituent Assembly charged with drafting the constitution, tried its hand but failed to make progress. Instead, it resolved to cobble together a constitution in piecemeal fashion. As and when necessary, the Knesset would pass certain “basic laws”; these would stack up over time; eventually, they would be codified into a constitution.

The first basic law—a law regulating the Knesset itself—wasn’t passed until 1958, ten years after statehood. Later there would be laws concerning state lands, the president, the prime minister and other ministers, the military, the judiciary, and more. (The famous “Law of Return” from 1950 was separate, having been passed eight years before the Knesset organized itself to pass the first basic law.)

But these “basic laws” still didn’t form a constitution endowed with superiority over other laws—for the simple reason that there were, as the Knesset’s website delicately points out, significant “differences of opinion” on the desirability of any such instrument. Thus, it would be a step too far to assume that the basic laws enacted by the Knesset could ever have functioned like the U.S. Constitution.

What, then, about the legal status of the declaration of independence? That question came up fairly soon. In December 1948, a case came to the Supreme Court concerning the government’s requisitioning of a private apartment, a move justified under a provision inherited from British mandatory law. Citing a passage of the declaration—namely, “The State of Israel shall be based on freedom, justice, and peace as envisaged by the prophets of Israel”—the owner of the apartment claimed that the state had violated his property rights. The court rejected the claim in these words:

> The only object of the declaration was to affirm the fact of the foundation and establishment of the state for the purpose of its recognition by international law. It gives expression to the vision of the people and its faith, but it contains no element of constitutional law which determines the validity of various ordinances and laws, or their repeal.

The declaration, in other words, had a single intended purpose: the time-limited purpose, cited by Ben-Gurion, of *hasbarah*, public diplomacy. It couldn’t be misapplied as constitutional law, and certainly couldn’t serve as a basis for judicial review.

Still, the idea that the declaration *also* embodied “the vision of the people and its faith” created a small opening. The intended purpose of the declaration may have been time-limited, but the

declaration nevertheless did manage to capture the state's core values. Since these had been approved by a unanimous vote, they had some indeterminate value going forward.

Later, in 1953, the Supreme Court took up a case involving the government's attempt to shut down a newspaper. Such censorship had been completely legal under the colonial-era regulations of the British mandate. But could the relevant laws also be applied by the government of Israel? The court decided that they could not, thereby accepting, at least in part, the argument that the declaration of independence *did* matter. Although it still couldn't be the basis of judicial review,

> the matters set forth in the declaration of independence, especially as regards the basing of the state on the foundations of freedom and the securing of freedom of conscience, mean that Israel is a freedom-loving state. . . . [I]nsofar as [the declaration] "expresses the vision of the people and its faith,". . . we are bound to pay attention to the matters set forth in it when we come to interpret and give meaning to the laws of the state, . . . for it is a well-known axiom that the law of a people must be studied in the light of its national way of life.

When it came to interpreting law, therefore, the declaration warranted *attention*, as an expression of the national consensus. This suggested that, as the enduring vessel of "the vision of the people and its faith," the document was gaining stature. But while it might be invoked to annul inherited, dictatorial British legislation that preceded the state, what voice did it have concerning laws enacted by the Knesset itself—that is, laws passed by the elected representatives of all the state's citizens?

Here the declaration's standing was much weaker. The situation through the 1980s was succinctly described by Ze'ev Segal, a legal expert, journalist, and law professor:

> Along with its great power, the declaration of independence is limited in terms of its legal application. The principles of the declaration, which recognize the fundamental freedoms of the individual, cannot stand up to explicit, unequivocal Knesset legislation. The Knesset may legislate as it wishes, and if its laws entail discrimination, then this is legislated discrimination which takes precedence over all that appears in the declaration of independence.

Segal's conclusion: Israel still needed a "formal, written constitution whose explicit directive will establish its supremacy over regular legislation, such that any law that contradicts it will be invalid." But in 1988, the year in which his article appeared, even he must have realized that such a "formal, written constitution" wasn't in the cards. And it is safe to say that it isn't in the cards today.

II. The "Constitutional Revolution"

This was not, however, the end of the story. Around 1990, when the Soviet bloc broke up and the Soviet Union came down, the formerly Communist states, now transformed into new or restored democracies, embarked on a slew of constitution-writing projects. All of them contained provisions for the guarantee and maintenance of basic rights.

Suddenly Israel, by comparison, seemed legally impoverished. It had no constitution, not even a "basic law" constituting a bill of rights. Such protections as existed were embedded in regular legislation that could be overturned at any time. The whole looked far too improvised for what had by now become one of the world's older continuous democracies.

This became the background to Israel's so-called "constitutional revolution," led by Supreme Court Justice Aharon Barak. In that revolution, the declaration of independence played a central role, being pressed into service as a virtual constitution. That was particularly the case with regard to the document's third and fourth sections, which allude to individual rights and freedoms. (For the traditional breakdown into sections, see the first installment in this series.)

The Knesset proceeded to pass two new basic laws guaranteeing those individual rights; in each, a stipulation required that the law be interpreted in accord with the declaration.

First came the basic law of 1992 on "Human Dignity and Liberty," which also, for the first time, defined Israel as "a Jewish and democratic state." As amended in 1994, the law reads as follows:

> Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel.

The same paragraph appears in the 1994 basic law on "Freedom of Occupation." And there, too, Israel is defined as "a Jewish and democratic state."

Justice Barak described this formula as totally transforming the status of the declaration. Not only did that document now enjoy legal validity, but the rights in it weren't just the "legal rights" that appeared in other laws but "constitutional rights," and it therefore now became a "constitutional obligation" to respect them as such. In the words of Justice Dov Levin, the two basic laws had

> brought about a dramatic change in the status of the declaration of independence, so that it is no longer just a source of interpretation, but an independent source of human rights. . . . [The declaration] gives the citizen in Israel a bill of rights on a supra-legal constitutional level.

In parallel, there emerged the false impression that the declaration itself established Israel as a "Jewish and democratic state." That isn't so; as we saw in this series' previous installment, the word "democratic" not only does not appear in the declaration, it was specifically deleted from that document by Moshe Shertok, Ben-Gurion's ally and soon (as Moshe Sharett) to become Israel's first foreign minister and then its second prime minister. Only since the 1992 basic law on

"Human Dignity and Liberty" has Israel been defined *by law* as "Jewish and democratic," a definition that rests not on the declaration but on legislation of the Knesset.

The subsequent expansion of juridical review by Israel's Supreme Court, enabled by and grounded in these two basic laws, has been hugely controversial in Israel, where the notion that everything is judiciable has been at the core of a long-running struggle between a left-liberal court and right-conservative governments. That struggle deserves its own treatment, but the point here is that nothing in the declaration itself can be said to foster such judicial activism.

To the contrary: the founders never intended their declaration to be used as a basis for judicial review. Indeed, the declaration disavows its own character as a constitution by mandating a totally different procedure to produce such a document. Those who pushed the declaration to the constitutional level did so in the absence of anything else.

III. The Nation-State Law

The two basic laws mentioned above deal with individual rights and freedoms. Arguably, they may be said to institutionalize and amplify certain promises made in the third and fourth sections of the declaration. But what about the collective rights in the first and second sections—and, specifically, the collective rights of the Jewish people to a Jewish state? Wouldn't those sections also need to be institutionalized and amplified in basic laws?

Aharon Barak, in his long tenure first as justice and then as president of the Supreme Court until his retirement in 2006, argued that they were already covered in the declaration of independence itself—which, he claimed and has continued to claim, cannot be invoked selectively. Rather, the first and second sections enable the following two sections. The state is Jewish and democratic, and its Jewish character is therefore fundamental; were the Knesset, by some strange fluke, to pass legislation making Israel a bi-national state, it would be unconstitutional. So there is no need for any specific legislation to anchor Israel as a Jewish state. It's already anchored.

Not everyone agreed, however; some took the view that there should be a basic law for this as well, especially since, after all, the day might come when all the basic laws were combined in a constitution. This was the rationale behind the drafting of a basic law entitled "Israel as the Nation-State of the Jewish People," first submitted to the Knesset in 2011. The argument for this law was made by onetime justice minister Ayelet Shaked:

> In our laws there are universal values, rights, already enshrined in a very serious way. But the national and the Jewish values are not enshrined. Over the past twenty years, there has been more of a focus on rulings over universal values and less over the Jewish character of the state. This tool [the nation-state bill] is a tool that we want to give the court for the future.

The bill soon became part of the left-right political warfare in Israel. Some on the left insisted that Israel should reconstitute itself as a "state of all its citizens," while some on the right countered that Israel must be defined as "the nation-state of the Jewish people." Many in the center already figured Israel was the Jewish state, so why the brouhaha? After all, what most everyday Israelis know about the foundations of their state comes from remembered fragments of the declaration of independence. The declaration affirms "the natural right of the Jewish people to be masters of their own fate, like all other nations, in their own sovereign state." What's not clear about that?

In 2018, after much contentious debate, the basic law "Israel: The Nation-State of the Jewish People" passed in the Knesset, but so pared down from earlier drafts as to raise a doubt that its passage will have much discernible effect. In nearly all respects it tracks the declaration of independence in less rich language.

Among the many reasons why some in the Jewish public thought the law essential, one remained unspoken but key. As I pointed out in the previous installment, Israel's Jewish majority is what makes Israeli democracy possible. It is because of the solid Jewish majority, still in the neighborhood of 75 percent, that all Israelis can and do have equal political rights. Were that majority to dwindle, by any process foreseen or unforeseen, then both the need and the demand for legal assertions of the state's Jewishness would grow.

It was Ze'ev Jabotinsky who put his finger on this issue:

> I do not believe that the constitution of any state ought to include special paragraphs explicitly guaranteeing its "national" character. Rather, I believe that it would be better for the constitution if there were fewer of those kinds of paragraphs. The best and most natural way is for the "national" character of the state to be guaranteed by the fact of its having a certain majority.

If Israel's "certain" Jewish majority were ever threatened in any way, then "Jewish and democratic," which today are mutually dependent, would indeed become mutually contradictory, and the pressure would increase for legislating Jewish preeminence. We are far from that today. But we should not take the Jewish state, as outlined in the declaration, for granted.

IV. Controversy and Consensus

On Israel's 60th anniversary in 2008, a Knesset member called for a ceremonial ratification of the declaration of independence. Some 30 Arab and ultra-Orthodox members of the Knesset opposed the idea. Uriel Reichman, a jurist and the founder of a college and law school, was stunned:

> It is not possible to imagine any American politician turning his or her back on the United States' Declaration of Independence. For me it was a bad omen. It was a stand against the Zionist message, against the very framework of our society.

A bad omen it may have been, but it shouldn't have come as a surprise. Earlier in this series I quoted an ultra-Orthodox signatory of the declaration as saying that he put his name to it only to create the impression of solidarity in the midst of an emergency and in the face of invading enemies; otherwise, he wouldn't have signed. Today an ultra-Orthodox member might think twice before putting his name to such a document.

Similarly for some Arabs. In the declaration, the Jews are the "we" who appeal to the Arab inhabitants of the land "to preserve peace and participate in the upbuilding of the state on the basis of full and equal citizenship." But the declaration doesn't mince words about the reason for the establishment of the state and for its Jewish character. Should an Arab member today be expected automatically to sign on?

So the declaration remains controversial. Nevertheless, for the vast majority, it still retains its power—though some of those responsible for it weren't sure it would. Consider the reaction of Moshe Gurari, the head of the Jewish Agency office in Tel Aviv. Gurari had worked closely with Moshe Shertok on the latter's draft of the declaration. The text was long, with many literary turns of phrase, some of them so elevated that everyday speakers of Hebrew would not have understood them. As we have seen, during the night before the declaration Ben-Gurion took this text, cut back its length and shifted its tone, and early in the afternoon of the next day presented it to the People's Council as a fait accompli.

Gurari was present later in the afternoon for the public reading, and he later described his reaction:

> When Ben-Gurion began to read the declaration, my heart sank: things that weren't in "our" version. Such gray prose: "Eretz-Israel was the birthplace of the Jewish people. Here their spiritual, religious, and political identity was shaped, . . . " and so on. With restrained pathos, without any dramatic gestures rising to the occasion, Ben-Gurion spilled out the declaration on the establishment of the state, from which he had mercilessly extracted every gem Shertok embedded in it with such love, and obscured every shining phrase within.

After the ceremony, Gurari asked Shertok what had happened to "their" text. Shertok "whispered to me, half in jest and half in anger, putting space between each word: 'He—killed—us—in cold blood!'"

Yet, on rereading the declaration many years later, Gurari also admitted that Ben-Gurion had given the document "a powerful simplicity." What did he grasp that Shertok didn't? That the moment called for just such "powerful simplicity"—indeed, that the ethos of Israel, like that of the Yishuv, would be one of plainspoken directness.

And so, not only did the declaration live on as a legal document, it also entered the consciousness of modern Israel. Because of its succinct precision, people remember its most potent passages,

even if only as disconnected fragments. That is especially true of the opening that Gurari found so plodding: “Eretz-Israel was the birthplace of the Jewish people.”

Ben-Gurion had added this at the last minute. In retrospect, it was an inspired stroke of genius.

V. The Living Declaration

Still, the words themselves did not make the state. Let’s return to the other events of May 14, 1948, as enumerated by Ben-Gurion in his diary entry for that day. The Jewish surrender at Kfar Etzion to the Arab Legion led to the massacre of its defenders. At Latrun, there was a forced retreat after “our people were badly hit by artillery fire.” The Alexandroni Brigade captured the Arab part of Kfar Saba. There were talks with the Irgun about its participation in a planned assault on Ramleh. An isolated settlement in the Arava Valley was in danger. There was a discussion with Yitzḥak Sadeh, Palmaḥ commander, on strategy. Another commander insisted the public be told of “the urgent need for entrenchments and barricades.” (Ben-Gurion added: “I drafted a public notice [on this matter] in the name of the General Staff.”) The call-up of more troops was decided upon. There was a problem of providing sufficient armor for the Negev brigade.

And, at the end of the entry, a simple laconic notation:

> One pm at the People’s Council. We approved the text of the declaration. At four o’clock in the afternoon, we declared independence. The nation was jubilant—and I mourn in the midst of the rejoicing. Our fate is in the hands of the defense forces.

Independence had been declared, but it had still to be won. Years later, asked for his view of the declaration’s significance, Ben-Gurion replied:

> I didn’t attribute much value to declarations. Not that they didn’t have great value, but at the time I didn’t make much of them or attribute to them any value. Immediately afterward they danced in the streets of Tel Aviv. I didn’t dance, I went to headquarters, we made preparations, during the night we received the news that an Egyptian column had invaded, a Syrian column, an Iraqi column, and then nothing else interested me.

It was at this point that the declaration receded into the background, and the war came back into the foreground. One can therefore understand the historians of May 1948 who have seen that day as Ben-Gurion did: consumed by a war for independence, which the declaration was meant to support.

It did the job. Israel gained swift recognition from the United States and the Soviet Union. Arms began to flow from abroad. The new state used its coercive powers to requisition war materiel and

draft soldiers, including fresh immigrants. In this total mobilization, the declaration pulled its weight.

It isn't surprising, then, that many years later, when Ben-Gurion was asked whether he would change the declaration if he could, he answered bluntly: "I wouldn't add or change anything." On the day he proclaimed it, he had admitted to the People's Council that the draft declaration wasn't "the height of perfection." But it had performed just fine; when he looked back on it, he saw perfection itself.

Thus did Ben-Gurion's perspective evolve over time. And this is a remarkable aspect of the document. Although it hasn't changed, perspectives do constantly change, and during more than 70 years each generation has read it differently.

This series of essays, culminating in the present one, has focused on the genesis of the declaration. As for its life post-1948, we've touched here on one aspect specifically in the realm of law. But much more could be said. How has the declaration been interpreted and reinterpreted by intellectuals and scholars? What role has it played in the rhetoric and mindsets of politicians? How has it been deployed in Israel's educational system? How have artists made reference to it? How have Israel's enemies understood it? (Mahmud Darwish, the poet who wrote the Palestinian so-called declaration of independence of 1988, said he took the Israeli declaration as his model.)

Not only has the declaration lived many lives in the past, but there are plans for its future. Until now, the scroll itself has been kept in storage. But it is slated to be put on regular public display in Tel Aviv's Independence Hall, itself now undergoing a renovation scheduled for completion in 2023. At that point, the declaration will go from an iconic image in facsimile to an object of Israeli pilgrimage. How will access to the original artifact affect the public perception of the content? We cannot know, but the future of the declaration may prove as significant as its past.

I began by calling the declaration the most consequential document composed by Jews since antiquity. It wasn't a miracle; it was the work of individuals with strong preferences and prejudices. But it also expressed the collective wisdom of the most determined and driven Jews in modern history, in the finest and most fateful hour of the Jewish people.

In 1948, as we saw, Israel's Supreme Court found that the declaration "expresses the vision of the people and its faith." Given all that we know about the document's tangled drafting, about the many debates and criticisms by the drafters themselves concerning both the substance and the style, that it should indeed have successfully captured that vision and that faith—the spirit of a people arisen—and have then continued to express it so enduringly, is amazing. But there it is. The troubled but proud history of the Jews, the national aspirations of the Zionist movement and the Yishuv, the grit of the people of Israel: all shine through.

More than 70 years after Israel's declaration of independence, its drafters and signatories are long gone, their signatures have begun to fade, and some of the names are forgotten. But the document lives: in Israel's politics, culture, and law, and in debates over Israel's future. It also lives because declaring and winning independence aren't one-time acts but repeated actions.

The struggle for independence is perpetual. That is why the declaration, drafted in a rush against a deadline, by preoccupied leaders, in the midst of a war, remains timeless. “In every generation one is obligated to see himself as though he came out from Egypt,” the Mishnah states. In every generation, Israel is summoned anew to declare and defend its independence.

ADVANCING JEWISH THOUGHT Mosaic

WHY THE ISRAELI DECLARATION OF INDEPENDENCE IS SO POPULAR

In part it is because Israelis have a higher regard for the people who wrote it than for the politicians they now elect to office.

November 29, 2021 | Martin Kramer

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This is a response to *How Israel's Declaration of Independence Became Its Constitution*, originally published in *Mosaic* in November 2021

I am grateful for the excellent comments by Eugene Kontorovich and Yonatan Green to the final installment of my seven-part series on Israel's declaration of independence.

Prime Minister Menachem Begin (on dais) at a reenactment of the declaration ceremony at Independence Hall on May 11, 1978. *Dan Hadani Collection, Pritzker Family National Photography Collection, National Library of Israel.*

Basically, these two learned legal authorities focus on what the declaration *isn't*. The declaration isn't a political map of the borders of Israel, and it isn't a credible substitute for a constitution; its drafters, as I show in my last essay, never intended that it be either of those things. Moreover, in announcing that a constitution would be produced separately and at a later date, the declaration explicitly disavows any pretense to be one.

In brief, on each of these basic points the three of us are mainly in complete agreement. Not only that, but we also agree on the importance of underscoring these facts. The reason? Because, as I have documented and as Kontorovich and Green concur, for some time now the Supreme Court of Israel has been, in Kontorovich's words, "treating [the declaration] as a constitutional

document—that is, as a basis to overturn Knesset legislation": a move that finds no warrant whatsoever in the declaration itself.

Since the three of us agree on these facts, how to keep our exchange interesting? Let me raise a few (minor) points of difference before drawing conclusions.

One of the underlying principles of the declaration is that the state of Israel is *not* a successor state to the British mandate for Palestine. Rather, it marks a restoration of the Jews to the sovereignty that they exercised in antiquity. In this view, the British mandate was but one more episode in a long interlude of foreign rule, now ended—but that end involved no transfer of power. Israel arose in the vacuum created by the termination of the mandate.

This somewhat undermines Eugene Kontorovich's argument about the new state's borders. These, he writes, "would be governed by the same rules as [were] other countries, . . . inherit[ing] the borders of the last top-level administrative unit in the area." This is the legal principle known as *uti possidetis juris* ("as you possess under law"). In this view, Israel automatically assumed the borders of British mandate Palestine. Kontorovich and I have debated this subject in *Mosaic* before, so I will be succinct here. In actuality, independent Israel never recognized the mandate borders and never claimed them for itself. It was born without borders, and without any commitment or claim to any specific borders—neither those of the UN plan of 1947 nor those of the mandate drawn earlier by Britain (and France) in the 1920s.

The Palestinian Arabs took an entirely different approach: they *did* claim the mandate borders. Although Kontorovich writes that the Palestinians waited to stake their claim to sovereignty for a full 40 years, "until the height of the [first] intifada in 1988," that is not the case.

In fact, on October 1, *1948*, the All-Palestine Government, then in Gaza, declared a "free and democratic sovereign state" of Palestine. Six of the seven Arab League member states recognized it. The declaration, conveyed to the United Nations, asserted "the full independence of the whole of Palestine as bounded by Syria and Lebanon from the north, by Syria and Transjordan from the east, by the Mediterranean from the west, and by Egypt from the south." The All-Palestine Government, as its name indicated, claimed to inherit all the borders of mandate Palestine—exactly what Israel's declaration of independence did *not* do.

I daresay that Ben-Gurion hadn't a clue about *uti possidetis juris*. He was guided by another principle: each Arab rejection of peace and each Israeli sacrifice in war needed to be translated into a corresponding gain of territory for Israel. Since there was no prospect of peace, Israel's declaration left border determination to the indeterminate future.

As Yonatan Green reminds us, Ben-Gurion similarly deferred constitutional debates to the post-war period (and beyond). The result of Ben-Gurion's postponing was that, to this day, Israel has had neither a complete set of borders nor a completed constitution. The deficit is perpetuated by deep political disagreements over the final contours of Israel's map and the final content of any Israeli constitution. In the absence of a consensus, partisan actors work to "create facts" in line with the actors' own purposes. This has been the strategy of, on one side, the post-1967

settlement movement and, on a very different side, Israel's legal establishment. Each spreads the idea that, to all intents and purposes, Israel already has either a certain map or a certain constitution, each of which the contending parties strive to shore up in hopes of its evolving into a permanent reality.

Zionism itself owes everything to this strategy. It was, in fact, a primary mode of operation throughout the pre-state period as the Yishuv's leaders exploited every vague provision in the League of Nations Mandate for Palestine in order to build a de-facto state within that mandate's remit. Ironically, the habit of building states-within-the-state has continued long after independence.

Does the declaration of independence provide guiderails for this competition? Most Israelis think so. They believe the declaration does set the key parameters: namely, the state is Jewish; its citizens are equal; and it seeks peace. Were Israel ever to veer away from any one of these, it would betray the vision that inspired its founding.

True, there are individuals, and even communities, who dissent from one or more of these principles. As long as they remain a minority, however, Israel will remain Israel. The declaration cannot be a constitution, for precisely the reasons so ably adduced by Kontorovich and Green: it was composed on the fly, it lacks specificity, and it cannot be amended. But this is a working definition, and the work is not finished.

I do also want to take issue with the way Yonatan Green words one of his arguments. He writes that the declaration "was drafted in secret by a handful of powerful figures embedded in the Zionist ruling elite." That may be one way of putting it, but I detect some undue asperity, much as if someone were to say that the American Declaration of Independence was drafted by a handful of rich plantation owners embedded in the white male elite.

In contemporary Israeli politics, the notion of a powerful and secretive "ruling elite" has been weaponized on the edges of the left and the right. But it doesn't describe 1948. The leaders who finalized the declaration started out as immigrants from Russia's empire who on arrival became hardscrabble pioneers. They worked, for very little compensation, in voluntary Zionist organizations or in government offices headed by British officials. They weren't yet a "ruling elite"—the British played that role—and they certainly weren't powerful. They even lacked the power to open the gates of their "national home" to Jewish refugees, and were punished for trying. Less than two years before he became a key drafter of the declaration, Moshe Shertok (Sharett) was arrested by the British and imprisoned for four months.

In other words, the drafters were far closer to the people than are today's Israeli politicians. Public trust in the Knesset hovers at 20 percent. Four times as many Israelis trust the IDF; twice as many, the Supreme Court. Indeed, this may help explain much of the lasting allure of the declaration: Israelis have a higher regard for the people who wrote it than for the politicians they now elect to office. (Readers with strong constitutions of their own may consult the many reports of politicians' high living, vulgar behavior, and venal corruption.)

Why do the drafters of the declaration seem so special? Well, they were. They had a vision. It emerged from living their entire lives—up to May 14, 1948—under regimes that oppressed Jews. This applied not just to tsarist Russia but also to British Palestine in its later years. They had been freshly seared by the Holocaust, and they now faced an onslaught by the entire Arab world. They had a heightened sense of history, they craved sovereignty, and they took nothing for granted.

In forging a state (and an army), they triumphed so spectacularly that they *did* become a powerful ruling elite. But that came later. The declaration's enduring appeal thus arises in good measure from a nostalgia for past leaders of a higher caliber. To cast these figures as a slightly sinister clique, imposing their will on the Yishuv, is a misreading. Most Israelis have come to see the declaration as the expression not of a "ruling elite" but of an entire generation.

That generation also included the Revisionist right. Menachem Begin, then the head of the Revisionists and of the Irgun, its paramilitary arm, wasn't in the Tel Aviv Museum when Ben-Gurion declared independence. But three members of the Union of Revisionist Zionists (Hatsohar)—the organization and party founded by Ze'ev Jabotinsky in 1925—did sit on the People's Council and signed the declaration. One of them, Zvi Segal, had been exiled to Eritrea by the British for his role in the Irgun. In the debate over the declaration, another of them, Herzl Rosenblum (Vardi), would explain the Revisionist position to the People's Council:

> We don't want to search for flaws and propose amendments on top of amendments. Had we been the drafters, perhaps we would have formulated some points differently. But here it is before us, and we are fully ready to accept it, along with other members of the Council.

Menachem Begin not only accepted the declaration, he celebrated it. In 1978, on the 30th anniversary of the state, Independence Hall hosted a reenactment of the declaration ceremony. Begin, now Israel's prime minister, sat on the dais; so did Yitzḥak Shamir, former commander of the Leḥi underground, now speaker of the Knesset. The hall filled with the recorded voice of Ben-Gurion reading the declaration. Begin, standing where Ben-Gurion had stood, gave a speech, describing the declaration as "moving and stirring." Hundreds milled outside, just as they had done 30 years earlier.

On the state's 70th anniversary, in 2018, Benjamin Netanyahu, head of the conservative Likud party and longtime prime minister, convened a festive cabinet session in Independence Hall. The State Archives brought the independence scroll for the occasion. Afterward the cabinet, formed largely of Likud ministers, stood on the steps of Independence Hall and sang *Hatikvah*.

These Likud leaders, heirs not of Ben-Gurion but of his nemesis Jabotinsky, embraced and celebrated the declaration as Israelis—proving once again that the declaration remains unsurpassed in its capacity to unite. Its words capture the spirit not of a person or a party but of a people. Precisely because Israel is so divided, the declaration still has a crucial role to play in reminding Israelis of their shared purpose. It is not a constitution; not by a long shot. But it is made of the stuff that belongs in one.